

W. C. McQuaide, Inc. and Joseph Patula and Scott Bodenschatz and Barry Michalides and Teamsters Local Union 429 a/w International Brotherhood of Teamsters, AFL-CIO and Freight Drivers, Dockworkers and Helpers, Local Union No. 24 a/w International Brotherhood of Teamsters, AFL-CIO and Thomas H. Boyes and Randy L. Hunter and Raymond B. Webb and David F. Rich and Timothy Wingard and James C. Weatherholtz. Cases 6-CA-24491, 6-CA-24500, 6-CA-24507, 6-CA-24636, 6-CA-24968-1 (Formerly 8-CA-24068), 6-CA-24968-2 (Formerly 8-CA-24272), 6-CA-24968-3 (Formerly 8-CA-24334), 6-CA-24968-4 (Formerly 8-CA-24416), 6-CA-24968-5, (Formerly 8-CA-24531), 6-CA-24968-6 (Formerly 8-CA-24606), 6-CA-24968-7 (Formerly 8-CA-24830), 6-CA-24968-8 (Formerly 8-CA-25210), 6-CA-25113, 6-CA-25211, 6-CA-25289, 6-CA-25366, and 6-CA-25503

November 30, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND TRUESDALE

On March 31, 1995, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply to the General Counsel's answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, W. C. McQuaide, Inc.,

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² With regard to the judge's conclusion that the Respondent selected employee Ivan Wilson for layoff in violation of Sec. 8(a)(3) and (1), we reject the Respondent's contention that Wilson's layoff was not discriminatory because the Respondent also laid off other employees who were not union supporters. See, e.g., *Eddyleon Chocolate Co.*, 301 NLRB 887, 890 (1991) (in the face of intense union animus and incredible explanations for the selection criteria, the fact that employees who did not support the union were also laid off does not preclude a finding of discrimination).

Johnstown, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Sandra Beck Levine and *Robin F. Wiegand, Esqs.*, for the General Counsel.

Michael A. Taylor and *Celeste M. Wasielewski, Esqs.* (*Ogletree, Deakins, Nash, Smoke & Stewart*), of Washington, D.C., for the Respondent.

G. Matt Matetich, of Reading, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried in Boardman, Ohio, on May 3 and 4, 1993; in Reading, Pennsylvania, on June 22, 1993; and in Johnstown, Pennsylvania, on May 25 and 26, July 12, 13, and 14, and September 27 and 28, 1993. Seventeen charges were filed on various dates in 1991, 1992, and 1993 by Teamsters Local Union 429 a/w International Brotherhood of Teamsters, AFL-CIO (Local 429); Freight Drivers, Dockworkers and Helpers, Local Union No. 24 a/w International Brotherhood of Teamsters, AFL-CIO (Local 24); and individuals Joseph Patula, Scott Bodenschatz, Barry Michalides, Randy L. Hunter, Raymond B. Webb, David F. Rich, Timothy Wingard, and James C. Weatherholtz, alleging that Respondent W. C. McQuaide (McQuaide) had interfered with, restrained, and coerced employees in the exercise of their right to support a union and had discriminated against employees in violation of Section 8(a)(3), (4), and (1) of the National Labor Relations Act (the Act). Ultimately, on April 15, 1993, the Regional Director for Region 6 issued a fourth order consolidating all but one of the charges. On June 22, 1993, on the General Counsel's unopposed motion, I consolidated the complaint in Case 6-CA-25503 with the earlier cases. The additional complaint alleged that McQuaide refused employment to James C. Weatherholtz in violation of Section 8(a)(4) and (1) of the Act. On the same date, over the opposition of McQuaide, I granted the General Counsel's motion to amend the original consolidated complaint issued by the Regional Director for Region 6 on January 8, 1993, by adding further alleged violations of Section 8(a)(1) of the Act. McQuaide, by its answers to the complaints, denied committing the alleged unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs¹ filed by the General Counsel and McQuaide, I make the following

FINDINGS OF FACT

I. JURISDICTION

McQuaide, a Delaware corporation, with an office and place of business in Johnstown, Pennsylvania, and with facilities at various places in Ohio and Pennsylvania, engages in the interstate transportation of freight. During the 12 months ending March 31, 1992, McQuaide, in conducting its

¹ Certain errors of the transcript have been noted and corrected.

business, derived gross revenues exceeding \$50,000 for the transportation of freight from Pennsylvania to points outside of Pennsylvania. McQuaide admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

McQuaide admitted, and I find, that Local 429 and Local 24 (the Union) are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background and Issues Presented

I find from the testimony of Stanley (Stan) McQuaide, its vice president of operations, that McQuaide is primarily a trucking concern operating in Pennsylvania and all the States contiguous to that State, plus Virginia and "a little bit in Connecticut." McQuaide also has a warehousing operation which is not involved in these cases. The firm was established in 1936 by Stan's father, W. C. McQuaide. Stan's brother Leland has been president of the firm since 1967. William F. McQuaide, a third brother, has been McQuaide's executive vice president since 1962.

Over the years, McQuaide has been the target of between six and eight unsuccessful organizing efforts by labor organizations. Four organizing campaigns reached the representation election stage. According to Leland McQuaide, McQuaide spent in the neighborhood of \$4 or \$5 million to combat their organizing attempts. A union organizing drive among McQuaide's employees in 1974, then numbering slightly less than 300, resulted in an employees' strike in support of the Union's demand for recognition and unfair labor practices by McQuaide in response, as found by the Board in *W. C. McQuaide, Inc.*, 220 NLRB 593 (1975), enf. in pertinent part 552 F.2d 519 (3d Cir. 1977).

In that earlier case, the Board found that McQuaide had violated Section 8(a)(1) of the Act by coercively interrogating employees about their union activities and sentiments, conditioning reinstatement of strikers on their willingness either to abandon the Union, or their willingness to inform McQuaide about the union activities of other employees, and threatening employees with reprisals to discourage union activity. *Id.* at 611 and 612. President Leland McQuaide figured prominently in those unfair labor practices. *Id.* at 610-611. The Board also found that McQuaide, by Leland McQuaide's conduct, had discriminated against strikers by delaying or denying their reinstatement in an effort "to purge his payroll of as many union adherents as possible." *Id.* at 610.

In the 1975 decision, the Board found that Leland, William, and Stanley McQuaide, and their sister, Jean Walker, owned and operated McQuaide. *Id.* at 596. The current McQuaide board of directors consists of Leland, William, Stanley, and Tim McQuaide and Jean Walker.

In the course of his testimony before me, Leland McQuaide reminisced about 1974, as follows:

I lost in the '74 strike, probably three million dollars. They burnt a warehouse a million and a half dollars, they burnt a new airplane and a hangar. They smashed up thousands of dollars worth of our equipment. They

slashed tires, they slashed airlines. They beat—they pulled a fellow out of a car down in Johnstown, Robert McCue—Titus McCue and Robert Dietrich, two Union Representatives, pulled one of my drivers out of his car in broad daylight, beat him up, we had him arrested and the Magistrate threw it out on a technicality.

Here was a guy who was hospitalized. The only thing I know about the Teamsters, all their history has been nothing but violence. Their history is notorious for it. They shouldn't even be allowed to represent anybody.

In late August or early September 1991, two of McQuaide's Ohio based drivers visited Local 24, where they obtained authorization cards. The two drivers solicited signatures among McQuaide's drivers both at its Richfield and Columbiana, Ohio facilities. On September 26, 1991, after receiving the necessary quantity of signed authorization cards, Local 24 filed a petition in Case 8-RC-14639, seeking an election among McQuaide's drivers at its two Ohio locations. On October 18, 1991, the Board conducted a representation hearing on Local 24's petition. Lee McQuaide attended this proceeding. In October 1991, following the hearing, Local 24, assisted by McQuaide's drivers, sought to broaden its organizing effort to include the employees at McQuaide's Johnstown and Bethel, Pennsylvania terminals.

In a Decision and Direction of Election issued on November 8, 1991, the Regional Director for Region 8, in agreement with McQuaide, found the unit sought by Local 24 to be inappropriate for purposes of collective bargaining and directed an election in a systemwide unit consisting of McQuaide's "truck drivers, warehouse employees, mechanics and dockmen, including fuel jockeys." The Regional Director for Region 8 gave Local 24 an opportunity to provide an additional showing of interest among McQuaide's employees. On November 14, 1991, Local 24 provided an additional 129 signed authorization cards. Region 8 advised Local 24 that some of the additional cards could not be included in the showing of interest. Local 24 withdrew from the organizing effort and was supplanted by Local 429, based in Reading, Pennsylvania. At the time Local 429 took over the organizing campaign, it had already discussed organizing with some McQuaide employees based at Bethel.

On February 12, 1992, Local 429 filed a representation petition with Region 6, in Case 6-RC-10719, seeking an election in a systemwide unit of McQuaide's drivers, dock workers, helpers, mechanics, and janitorial employees. The petition claimed that there were 360 employees in the proposed bargaining unit. On May 14, 1992, following a hearing, the Acting Regional Director for Region 6 directed an election in a systemwide unit of McQuaide's drivers, dock workers, mechanics, jockeys, and warehousemen. Between June 11 and 27, 1992, Region 6 conducted a mixed mail and manual election by secret ballot in the systemwide unit found appropriate by the Acting Regional Director.

On November 23, 1992, following the election, the Regional Director for Region 6 issued his report on challenged ballots, order directing hearing on objections, and notice of hearing. The Regional Director found there were sufficient challenged ballots to affect the results of the election. The parties' stipulations obviated the need for a hearing on the determinative challenges, which were sustained. The Re-

gional Director, however, directed a hearing on three of Local 429's objections. Thereafter, the Regional Director consolidated the objections for hearing, ruling, and decision with the cases in the instant proceeding.

By oral motion, on June 22, 1993, the Union sought to withdraw its objections in Case 6-RC-10719. I granted the motion and the General Counsel's subsequent motion dated July 9, 1993, to sever that case and remand it to the Regional Director for action consistent with Local 429's withdrawal of its objections.

The issues presented in these cases are whether a preponderance of the testimony shows that McQuaide responded to Local 24's and Local 429's organizing efforts in violation of Section 8(a)(1)² of the Act by:

- (a) Threatening shutdown of its operations if a union succeeds in organizing its employees.
- (b) Creating the impression among its employees that their union activities were under its surveillance.
- (c) Threatening an employee with bodily harm because he supported a union.
- (d) Threatening unspecified reprisals because an employee assisted a union.
- (e) Coercively interrogating employees regarding their union membership, union activities, or sentiment toward a union.
- (f) Prohibiting an employee from participating in union activity and showing support for a union by wearing a hat.
- (g) Threatening employees with discharge because they supported the Union.
- (h) Promising a wage increase if employees withheld support for a union.

Section 8(a)(3)³ and (1) of the Act, by:

- (a) Issuing warnings to employees John Pine, Jack Boyes, and Randy Hunter.
- (b) Suspending employees Jack Boyes, and Thomas Boyes.
- (c) Demoting employee Glenn Watts.
- (d) Reducing the working hours of employees Thomas Boyes and Randy Hunter, and changing Randy Hunter's routes.
- (e) Refusing to allow employee Jack Boyes to drive and denying him wages for 1 day.
- (f) Attempting to transfer employee Thomas Boyes from Richfield, Ohio, to Johnstown, Pennsylvania.
- (g) Laying off employees Thomas Boyes, Dale Salsbury, David McGuigan, David Rich, Timothy

Wingard, Raymond Webb, Scott Bodenschatz, Joseph Petula, Ivan Wilson, and Leon Martin.

(h) Denying wages to employee Thomas Boyes.

(i) Discharging employees Barry Michalides, Glen Watts, Robert Marshall, James Weatherholtz, Jack Boyes, Thomas Boyes, Dale Salsbury, and David McGuigan.

and Section 8(a)(4)⁴ and (1) of the Act, by:

- (a) Refusing to rehire employee James C. Weatherholtz.
- (b) Discharging employee Robert Marshall.
- (c) Suspending Randy Hunter for 1 week.

B. *Interference, Restraint, and Coercion*

In September 1991, at McQuaide's Johnstown dock office, employees Jack Boyes and John Pine told Dock Foreman Ronald (Ron) Locker⁵ that they thought a union would be good for McQuaide. Jack Boyes also told Locker that he and Pine were organizing the Union. Locker warned that if they were thinking about organizing a union, they would be fired. Continuing, Locker told the two employees that even if they succeeded in bringing a union in, McQuaide would shut down and reopen as a nonunion operation. Thereafter, until May 1993, Foreman Locker advised Pine on several occasions that if a union organized McQuaide, the employees would strike and be replaced. Locker also repeatedly warned Pine that he would lose his job, talking about the Union.⁶ Warnings by a supervisor to employees that their union activity will lead to plant closure, discharge, or other reprisals by their employer are likely to have a coercive impact on them, and thus violate Section 8(a)(1).

The General Counsel contends and McQuaide denies that Dock Foreman Ronald Locker and Dock Foremen Vallie Baker and Anthony Kostyk are supervisors within the meaning of Section 2(11) of the Act. As defined in Section 2(11) of the Act, the term supervisor denotes:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

This section is to be read in the disjunctive; possession of any one of the enumerated powers establishes supervisory status. *Warner Co. v. NLRB*, 365 F.2d 435, 437 (3d Cir. 1966); *Eastern Greyhound Lines v. NLRB*, 337 F.2d 84, 87 (6th Cir. 1964). As the party contending that the disputed Johnstown dock foremen are statutory supervisors, the Gen-

² Sec. 7 of the Act provides in pertinent part:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8(a)(1) of the Act provides in pertinent part:

It shall be an unfair labor practice for an employer—to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

³ Sec. 8(a)(3) of the Act provides in pertinent part:

It shall be an unfair labor practice for an employer—by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

⁴ Sec. 8(a)(4) of the Act provides:

It shall be an unfair labor practice for an employer—to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

⁵ I note from reading McQuaide's pleadings and its brief that the transcript of the testimony in these cases and the General Counsel's brief incorrectly refer to this individual as "Ron Locker."

⁶ I based my findings regarding Foreman Locker's warnings on John Pine's and Jack Boyes' uncontradicted testimony.

eral Counsel bears the burden of proof on that issue. *We Can, Inc.*, 315 NLRB 170, 171 (1994).

At all times material to these cases, McQuaide employed the disputed dock foremen at its Johnstown terminal. In addition to the disputed dock foremen, there were two others, Don Smith and William Robertson. After disputing his status, McQuaide, in its answer to the consolidated complaint, conceded that Robertson was a supervisor within the meaning of Section 2(11) of the Act.

The Johnstown terminal's freight dock operates four shifts during its 24-hour operation. The daylight shift ran from 7:30 a.m. until 5 p.m. The second shift ran from 5 p.m. until anywhere from 2 to 4 a.m., depending on the amount of work. The third shift ran from 7:30 p.m. until approximately 5 a.m. The fourth shift was from 10 p.m. until approximately 8 a.m. Four of the dock foremen rotated shifts on a weekly basis. They also rotated duty in the dock office, on a weekly basis. One dock foreman is assigned to each shift, except that two foremen worked on the third shift. Foreman Don Smith worked exclusively on the fourth shift. The first and second shifts each employed four to eight dock workers, depending on the volume of freight. The night shifts had a maximum of between 30 and 40 employees.

The dock foreman stationed in the dock office received the bills of lading from the dispatch office on clip boards. The dispatch office arranged the bills of lading on the clip boards in the order in which they should be loaded, i.e., the ones with the furthest destinations scheduled first. The other dock foremen made the actual loading or unloading assignments, taking into consideration the speed and accuracy of the available dock employees. A rush shipment would go to someone "you knew could get the work done." The foremen would decide in each case whether he should assign one or two employees to load a truck. The same considerations would arise in regard to unloading a truck.

Before distributing the bills of lading, the foremen checked a computer in the dock office to learn the door location of the truck or trailer on the dock. If the computer showed that a trailer was in the terminal parking lot, the foremen would direct that it be backed up to a door. They would write the appropriate door number on the bill of lading before handing it off to a dock employee.

After making assignments, the dock foremen stationed on the dock roamed around the dock noting trailer numbers as they backed in, and watching the employees work. Dock foremen spent approximately 5 percent of their worktime doing manual labor.

The dock foremen, when stationed in the dock office, had authority to grant time off to dock employees because of illness or other personal reasons. On granting such releases, the dock foremen would initial the employee's timecard and provide a written explanation for the early departure on the card. Dock employees seeking 1 day off from work, or permission to come to work 1 or 2 hours late, looked to the dock foreman stationed in the dock office for permission to do so. The dock foreman in the dock office enjoyed additional authority to determine, on his own, when employees on the evening shift had completed enough loading so that the next shift could comfortably perform their share, without interfering with the drivers' timely departures.

The dock foremen had authority to require dock employees to do work over. Foremen used their independent judgment

to decide if freight had been properly loaded to avoid damage. After a truck was loaded, a dock foreman would check the load against the documentation, approve it if it checked out, and close the doors on the back of the truck or trailer. Dock employees were not authorized to close those doors. If he was not satisfied with the loading, the foreman had authority to direct dock employees to take such corrective action as he deemed necessary.

When Vice President Stan McQuaide and his son Mark McQuaide, who was director of operations, were present at the Johnstown terminal, they supervised the dock foremen. At night, when Stan and Mark were not at the terminal, Dispatcher Tom Kring supervised the dock foremen.

Dock foremen regularly evaluated probationary employees after 30 days, 45 days, 60 days, and 90 days. In 1989, 1990, and 1991, the foremen provided McQuaide with annual evaluations of the dock employees. In 1991, Mark McQuaide required Foremen Val Baker, Anthony Kostyk, William Robertson, and Ron Locker to evaluate dock employees on a written form. Relying on those evaluations, William McQuaide decided which dock employees should be laid off at the end of 1991. In 1992, Mark McQuaide asked one foreman, Ron Locker, and three nonsupervisory employees to evaluate the dock employees.

From the foregoing, I find that the dock foremen's duties and responsibilities satisfy the requirements of Section 2(11) of the Act. Thus, I find that they use their independent judgment to direct employees to reload cargo. I also find that for 1 in 4 weeks they use independent judgment to decide how long the night-shift employees must work before sending them home. They also have discretion to grant employee requests for time off. From these factors, I conclude that they have the authority "responsibly to direct" the work of McQuaide's dock employees, using independent judgment, and in the interest of McQuaide, as prescribed by Section 2(11) of the Act.

There are factors which suggest that at all times material to these cases, McQuaide considered the dock foremen to be supervisors. Thus, McQuaide required the dock foremen to attend monthly supervisory meetings on a regular basis. Also present at these meetings were department heads, dispatchers, Operations Manager Mark McQuaide, and Vice President Stan McQuaide. Further, during the union campaign involved in the instant proceedings, McQuaide required Dock Foremen Robertson, an admitted supervisor, and Val Baker to receive instructions from its attorneys on how management officials should act in the face of union activity. McQuaide's practice of asking them to evaluate employees and using such evaluations to decide whether to retain the employees also suggests that the dock foremen were part of management during the period relevant to the violations of the Act alleged in these cases.⁷

In sum, I find that the record shows that Dock Foremen Locker, Kostyk, and Baker are supervisors within the meaning of Section 2(11) of the Act. I further find that Locker's

⁷My findings of fact regarding the supervisory status of Dock Foremen Locker, Kostyk, and Baker are based on Foremen Baker's and Robertson's testimony.

coercive remarks to employees Jack Boyes and John Pine violated Section 8(a)(1) of the Act.⁸

In October 1991, word of the union campaign reached Walter Brown Jr., a truckdriver employed at McQuaide's Bethel, Pennsylvania terminal. From October 1991, until he quit his job, Brown handed out union authorization cards. During that same month, Brown asked Terminal Manager Jim Gary, a supervisor, what he thought of "the union business that's going on." Gary replied that he had heard that people were distributing cards, and warned that McQuaide would shut down before allowing the Union to get in.

In a second conversation, in November 1991, Gary told Brown of other companies having problems after a union came in. Gary also told Brown that McQuaide would close down rather than have a union among its employees.⁹

Terminal Manager Gary conversed with Bethel employee Leon Martin on November 1, 1991. Gary asked Martin about a union meeting involving some of McQuaide's Ohio drivers. When Martin invited him to attend, Gary replied that he had a wedding to attend and could not. He went on to say that if he could attend the meeting he would tell the Ohio drivers about him losing his job and putting McQuaide out of business because of the organizing drive.¹⁰

Gary's warnings of a McQuaide shutdown in the wake of a successful union organizing campaign came in the context of an active union organizing drive. They were likely to cause the listening employees to abandon their right under Section 7 of the Act to support that drive. The message was that rather than deal with a union selected by its employees for purposes of collective bargaining, McQuaide would terminate their employment by going out of business. I find that Gary's warnings violated Section 8(a)(1) of the Act. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969); *Indiana Cal-Pro. v. NLRB*, 863 F.2d 1292, 1301-1302 (6th Cir. 1988); and *Mon River Towing, Inc. v. NLRB*, 421 F.2d 1, 9-11 (3d Cir. 1969).¹¹

⁸ Although I have found Foreman Locker was a statutory supervisor, I also conclude that even absent such a finding, for purposes of 8(a)(1) allegations, it was reasonable for employees to believe that he was a member of and spoke for McQuaide's management. Thus, even if he were not a supervisor, I would attribute his remarks to McQuaide and find them violative of Sec. 8(a)(1) of the Act. *Debber Electric*, 313 NLRB 1094, 1095 (1994).

⁹ My findings of fact regarding Terminal Manager Gary's remarks to employee Brown are based on the latter's uncontradicted testimony.

¹⁰ According to Gary, he and Martin conversed in December 1991 about a union meeting. Gary also testified that all he could recall of that exchange was that after Martin brought up the meeting Gary jokingly asked if he could attend also. Gary also denied saying anything about a wedding. Gary, however, did not deny expressing the warning of his job loss and the shutting down of McQuaide. Gary did not deny making the warnings attributed to him by Martin. Further, Martin seemed to be giving his more detailed recollection in a frank manner. Accordingly, I have credited Martin's account of their conversation, and his testimony that it occurred on November 1, 1991.

¹¹ McQuaide contends that the amendment of the consolidated complaint at the hearing to include Terminal Manager Gary's remarks was barred by the 6-month limitation period prescribed by Sec. 10(b) of the Act. I find, however, that these allegations are closely related to other allegations of unlawful threats of economic reprisals and other alleged violations of the Act in these cases, which arose from McQuaide's response to Local 429's and Local 24's

On the evening of January 10, 1992, employee David Meier visited his friend, Customer Service Manager Donald McMullen, an admitted statutory supervisor, who, while discussing the union campaign, asked Meier about a Local 429 meeting scheduled for the following evening. Specifically, McMullen asked if Meier planned to attend. Meier answered that he was not going to the meeting. Meier, however, attended the meeting.

On the day following the union meeting, McMullen approached Meier at the Johnstown terminal, and asked if he had attended the Local 429 meeting. When Meier denied that he had, McMullen accused him of lying. McMullen went on to warn Meier that Mark McQuaide had a list of all the employees who had attended, and that Meier's name and the names of other employees, including employees Ray Webb, Scott Bodenschatz, and Joe Patula were on the list. McMullen asked Meier why he had attended the meeting. Meier said he was curious, and wanted to see what the Union had to offer him.¹²

In determining whether McMullen's questioning of Meier violated Section 8(a)(1) of the Act, as alleged, I have examined the surrounding circumstances, as required by Board policy. *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984), enf. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006, 1007-1009 (9th Cir. 1985). Accord: *Pepsi Cola Bottling Co.*, 301 NLRB 1008, 1011 (1991). I note that the initial questioning about whether Meier intended to go to the union meeting occurred in McMullen's home. McMullen and Meier are friends, and McMullen, though a supervisor, was not in the chain of authority above Meier. Nor did McMullen accompany his initial questioning with any other coercive remarks. However, I also noted factors which rendered all of McMullen's questioning of Meier unlawful.

campaign to organize its employees in 1991 and 1992. Accordingly, under Board policy, the allegations regarding Gary's remarks were not barred by Sec. 10(b) of the Act. *Southwest Distributing Co.*, 301 NLRB 954, 956 (1991).

¹² McMullen admitted talking to Meier about a union meeting in January 1992. According to McMullen, Meier told him there would be a union meeting and that he had no interest in being there and really did not want to be there. Later, according to McMullen, he came upon Meier and heard him say that he had attended the union meeting. McMullen admitted saying that he was unhappy about Meier's lying about his intent to stay away from the union meeting. McMullen also testified that this expression of displeasure was the only conversation he had with Meier in their second encounter regarding the union meeting. McMullen also testified in substance that on the first occasion Meier volunteered the information about the union meeting. Meier testified about his encounters with McMullen in a forthright manner and seemed more certain about his version of their two conversations about the meeting. McMullen seemed to be carefully choosing his words and uncertain about details of the encounters. Yet, with all his care, McMullen did not flatly deny creating an impression of surveillance in his second conversation with Meier, as alleged in the consolidated complaint. Accordingly, I have credited Meier's version of his conversations with McMullen about the union meeting.

The consolidated complaint did not allege McMullen's questioning of Meier on January 10 and 12, 1992, about his attendance at the union meeting, as violations of the Act. As the facts regarding these two incidents of interrogation have been fully litigated, however, my findings that they violated Sec. 8(a)(1) of the Act are warranted. *St. Joseph Hospital East*, 236 NLRB 1450 fn. 5 (1978).

An important factor in my assessment was the abundant evidence of union animus, as reflected by McQuaide's unfair labor practices, both before and after McMullen's questioning. These included threats of reprisal against employees seeking union representation at McQuaide, and, as found below, the infliction of reprisals such as discharges and lay-offs on employees who supported either Local 24 or Local 429. A further consideration was, the absence from McMullen's questioning of any assurance that Meier would not suffer any reprisal at McQuaide's hands if he attended the meeting.

I also noted that in the second round of interrogation, on January 12, McMullen's friendship with Meier was not reflected. It did not prevent him from calling Meier a liar, when Meier denied attending the union meeting. McMullen increased the coercive atmosphere by warning that Operations Manager Mark McQuaide had a list of those employees who had attended the meeting. This remark, likely to convince Meier that McQuaide's management was using surveillance to identify employees engaged in union activity, violated Section 8(a)(1) of the Act. I also find that on balance, the surrounding circumstances rendered McMullen's questions coercive in violation of Section 8(a)(1) of the Act.

On January 10, 1992, Leland McQuaide, referred to as Lee in the transcript, summoned employee Randy Hunter to his office initially to talk about a heated exchange of bad language between Hunter and Dock Foreman Anthony Kostyk. Lee remarked that he could not tolerate name calling and would have to discharge Hunter. Thinking that discharge was unwarranted for vulgar language, Hunter asked for an explanation for the summons to Lee's office.

Lee answered, "You ought to know, you and that f—king union." Hunter denied having anything to do with the Union. Lee said at least 30 employees had told him that Hunter was distributing authorization cards and talking for the Union. Hunter challenged Lee to produce the employees. Lee said he could not do so. He also accused Hunter of soliciting signatures on union cards over a CB radio in West Virginia. Although he had used a CB radio to obtain one signed card, Hunter denied that he had done so.

Hunter remained, as Lee told him why McQuaide did not need a union and vowed never to sign a contract with the Teamsters. Lee said, "I would never sign a contract with the Union because they are f—king thieves." As he spoke about the Union, Lee became irate and fired Hunter "a couple of times." After each "firing," Lee hired Hunter back. At last, the conversation drew to a close. In parting, Lee warned Hunter, "If I find out you had anything to do with this Union, I'm going to punch you right in the nose."¹³

¹³ In his testimony on direct examination, Lee, in response to leading questions by McQuaide's counsel, denied telling Hunter that he knew Hunter was a union ringleader. Lee also denied saying he would not sign a contract with the Teamsters, and that he would punch Hunter in the nose if he found that Hunter was involved with the Union. However, Lee's testimony left much of Hunter's detailed testimony on direct examination unchallenged. Undisturbed was Hunter's testimony that Lee lectured him about why McQuaide did not need a union, and the detailed testimony about Lee's remarks showing that he was keeping tabs on Hunter's union activity. This circumstance, and my impression that Hunter was earnestly searching his memory, and giving a detailed account, induced me to credit his testimony and reject Lee's regarding their encounter on January 10, 1992.

The General Counsel contends that Lee McQuaide coercively interrogated Hunter on January 10, 1992. I find that Lee designed his response to Hunter's question regarding the purpose of their confrontation to press the employee to admit his part in the Union's organizing campaign. Thus, when Hunter asked his question, Lee shot back "you ought to know, you and that f—king union." Here, Lee was accusing Hunter of actively allying himself with the Union. By this accusation, I find that Lee was, in effect, interrogating Hunter about his union activity.

In determining whether Lee's implied question regarding Hunter's union activity was coercive, I have again applied the Board's policy set out in *Rossmore House*, supra at 1177–1178 fn. 20, to which I have referred above. In evaluating the coercive impact of Lee's effort to induce Hunter to admit his involvement with Local 429, I have considered the surrounding circumstances.

Here, McQuaide's top executive, Lee McQuaide, singled out Hunter, summoned him to the executive's office, on company property, and pressed him to reveal whether he had been soliciting signatures on union authorization cards. When Hunter flatly denied any involvement with the Union, Lee presented the word of 30 employees to belie Hunter's assertion. Lee also made remarks about Hunter's CB radio activity. These two components of Lee's remarks certainly suggested that McQuaide was keeping Hunter under surveillance. They also were part of Lee's effort to pressure Hunter into coming forward with information about his union activity. Absent was any showing that Lee's inquiry had any valid purpose or that he had assured the employee against reprisal at McQuaide's hands.

The suggestion in Lee's remarks that McQuaide was keeping watch on Hunter's union activity, Lee's expressions of hostility toward the Union, his hiring and firing of Hunter, and his threat to inflict physical punishment on Hunter because of his union activity provided a strongly coercive overtone to the confrontation. I find that, with the addition of McQuaide's unfair labor practices, found elsewhere in this decision, there can be no doubt of the intimidating effect of the atmosphere surrounding Lee's interrogation of Hunter. Accordingly, I further find that Lee's interrogation of Hunter violated Section 8(a)(1) of the Act. *Gerkin Co.*, 279 NLRB 1012 fn. 3 (1986).

Lee's remarks included other violations of the Act. Thus, I find that McQuaide violated Section 8(a)(1) of the Act by Lee's remarks that 30 employees had said that Hunter was handing out cards, and by Lee's comments about Hunter's CB radio activity on behalf of the Union. Such remarks were likely to convince Hunter that McQuaide was keeping his union activity under surveillance and thus impair his exercise of rights guaranteed by Section 7 of the Act. Also violative of Section 8(a)(1) of the Act was Lee's threat to punch Hunter in the nose if he "had anything to do with this Union."

In April 1992, Lee telephoned McQuaide driver John Pine, who was actively supporting Local 429's campaign, and enjoined Pine from putting "any f—king union decals" on company equipment. Lee, speaking loudly, said he was having "union problems" and believed Pine was one of the reasons for them. Lee prohibited Pine from both passing out

union hats and talking about the Union around employees. Further, Lee warned Pine of discipline if he did not stop wearing a union hat. At the end of his diatribe, Lee asked: "[D]id you understand that?" and hung up.¹⁴ I find that Lee's proscriptions against distribution of union hats and discussion of the Union in the presence of other employees, which he delivered to Pine by telephone, in a loud voice and with a hostile manner, were likely to coerce and restrain the listening employee in the exercise of his Section 7 right to support the Union. I further find, therefore, that by this conduct McQuaide violated Section 8(a)(1) of the Act. I also find that by Lee's threat to discipline Pine if he continued wearing a union hat, McQuaide again impaired Pine's statutory right to show support for a labor organization, and violated Section 8(a)(1) of the Act.

On or about June 9, 1992, 2 days before the start of the combination mail and manual representation election, Randy Hunter heard thoughts about the Union from McQuaide's director of maintenance, John Plummer, a supervisor. Initially, Hunter talked about his truck. However, Plummer interrupted with: "What are you going to do?" Hunter asked, "What do you mean?" Plummer explained: "You know we got Lee's attention now, if you do the right thing and vote this out, we can get a raise, we can get some money out of them." At another point in the discussion, Plummer warned, in substance, that if Local 429 won the election, Lee was "going to close the doors."¹⁵ I find that Plummer's remarks about a possible wage increase if the employees rejected Local 429 and his warning of Lee McQuaide's intention to terminate McQuaide's business if Local 429 won the election were likely to chill employee support for the Union and, thus, were violations of Section 8(a)(1) of the Act.

¹⁴I based my findings regarding the strictures which Lee McQuaide imposed on John Pine in April 1992 were based on Pine's testimony. Lee admitted talking to Pine about not defacing McQuaide's equipment with union decals. Lee provided this testimony in a frank manner, without the need for carefully cobbled leading questions by McQuaide's counsel. When it came to whether he had prohibited Pine from passing out union hats or talking about the Union in the presence of other employees, however, counsel first asked him if he could "recall" issuing those instructions to Pine, and then when I questioned the meaning of "recall," as used in the question, counsel amended his question and asked if Lee had done so. Lee got the message and answered, "I did not say that." In contrast with Lee, Pine seemed to be sincerely giving his full recollection of Lee McQuaide's proscriptions. Accordingly, I have credited Pine rather than Lee.

¹⁵Plummer admitted that he "probably had quite a few conversations with Randy [Hunter] on the phone." In response to leading questions by McQuaide's counsel, however, Plummer denied the unlawful remarks attributed to him by Hunter. Plummer sought to enhance the credibility of his denial by punctuating each denial with a reason to believe him. Thus, when asked about making a remark about a wage increase if the Union won the election, Plummer's suggested reason for accepting his denial was: "I have nothing to do with wages." When asked if he recalled any conversation with Hunter where the Teamsters was a subject of the discussion, Plummer explained, "We were instructed not to talk to the employees about that—anything to do along those lines." The denials and the accompanying explanations, however, left much of Hunter's recollection of Plummer's remarks undenied. This factor plus my impression that of the two, Hunter was the more conscientious about searching his memory for the entire conversation, led me to credit him rather than Plummer.

Employee Robert Maticic conversed with Plummer on June 12, 1992, at McQuaide's Johnstown terminal. Plummer inquired if employee Raymond Webb was distributing cards for Local 429. Maticic said he did not know. At this, Plummer predicted: "Ray Webb, after this is all done, he'll be going down the road."

Plummer's inquiry and prediction regarding employee Ray Webb occurred on the second day of the Board-held representation election among McQuaide's employees. Hence, when Plummer said "after this is all done," I find he was referring to the election and Local 429's organizing campaign. The sense of Plummer's prediction was that once those events were concluded, Webb's employment at McQuaide would also come to an end. In light of McQuaide's resort to discharges, and other adverse personnel actions to punish union activists in late 1991 and during the period of 1992 preceding June 12, 1992, as found below, Plummer's message was clear. McQuaide would lose no time in finding a pretext to get rid of another union activist, Webb. I find that by this prediction McQuaide coerced Maticic, and thus violated Section 8(a)(1) of the Act.

Applying the Board's policy in *Rossmore House*, supra at 1178 fn. 20, I find that Plummer's interrogation of Maticic was coercive and violated the Act. Here, a supervisor, Plummer, at McQuaide's Johnstown terminal, asked an employee about another employee's union activity and then quickly delivered a message to his listener that as soon as Local 429's campaign and the representation election are over McQuaide will punish the suspected union activist for helping the Union by discharging him. In this context, the listening employee, Maticic, would likely infer that his own support for Local 429 would provoke McQuaide to deal similarly with him. Viewing this incident against the backdrop of McQuaide's unfair labor practices, including discharges of union activists, as found elsewhere in this decision, I find that Plummer's inquiry about Webb's union activity restrained and coerced Maticic in the exercise of his right to support Local 429, and thus violated Section 8(a)(1) of the Act.

During the week of June 22, 1992, during his working hours at McQuaide's Johnstown terminal, employee Raymond Webb wore a hat with a Teamsters logo on it. On the night of June 24, 1992, while Webb was working with his Teamsters hat on, Director of Operations Mark McQuaide caught a glimpse of it and approached Webb. McQuaide commented to Webb, using the employee's nickname, "Nice hat you have on, Frog." Webb expressed agreement. Continuing, Mark said, "You don't have the balls to wear that in front of Stan McQuaide." Webb responded that he didn't "need the hassle." Mark McQuaide concluded with the warning: "You better hope the Union comes in because if it doesn't, I will remember you."¹⁶

¹⁶Mark McQuaide testified that he saw Webb's union hat every night before the election, but denied saying anything to Webb about the hat. Mark's demeanor, however, cast considerable doubt on the reliability of his testimony in this regard. His defiant mien, as he gave evasive responses to me regarding McQuaide's attitude toward the Union, and when counsel for the General Counsel questioned him about his instructions in connection with the 1992 evaluation of dock employees, suggested that he had no respect for the forum, and that he was a reluctant witness. Accordingly, I have rejected Mark's testimony where it conflicts with Webb's. Instead, I

In light of McQuaide's unfair labor practices both before and after this encounter, Mark's remarks in response to Webb's Teamsters hat carried sinister meaning. Mark's remarks to the effect that Webb did not have the courage to wear his Teamsters hat in front of Stan McQuaide amounted to a warning that Mark's father would respond by inflicting some reprisal on Webb. Similarly, the warning that if the Union lost the election Mark would "remember" Webb strongly suggested that the director of operations would inflict some harsh treatment on Webb in retaliation for his union activity. I find that by these remarks McQuaide violated Section 8(a)(1) of the Act. *Honeycomb Plastics Corp.*, 288 NLRB 413, 419 (1988).

On September 24, 1992, while interviewing prospective employee David McGuigan at the Johnstown terminal for a job at McQuaide, Lee gave vent to his antiunion sentiment. Lee McQuaide asked if McGuigan knew employees Dale Salsbury and Tom Boyes. McGuigan denied knowing the two employees, and answered no, when Lee asked if he was a union plant. Lee questioned McGuigan about his union sentiment. McGuigan admitted that he had been a union member, but said that he was no longer, and had a withdrawal card. Lee predicted that Tom Boyes and Dale Salsbury would not be there much longer because they supported Local 429. Lee also said he wanted nothing to do with "their f—king unions in Youngstown or Ohio" and that he did not want anything to do with anyone supporting a union.¹⁷ Soon after this interview, McQuaide hired McGuigan.

The Board has long recognized that "questions concerning union preference, in the context of job application interviews, are inherently coercive and unlawful even when the applicant is hired." *Gilberton Coal Co.*, 291 NLRB 344, 348 (1988). Applying that policy here, I find that Lee McQuaide's interrogation of McGuigan was coercive, and thus violated Section 8(a)(1) of the Act.¹⁸

have credited Webb's frank testimony regarding Mark's reaction on seeing Webb's Teamsters hat on June 24, 1992.

¹⁷ Lee McQuaide admitted interviewing McGuigan for employment. However, Lee denied questioning McGuigan about his union sentiment or enjoining him from having anything to do with union supporters. Lee also denied saying that Tom Boyes and Dale Salsbury would not be with McQuaide much longer because they were Local 429 supporters. Lee testified that he could not recall offhand whether McGuigan had a history of working for union employers. Lee also speculated that he "would have probably told him that we were a nonunion company and I want to stay nonunion and if it would ever come to an election or something, I might look for his support, that would be as far as I would go." In contrast with Lee's imperfect recollection, his speculation as to what he said, and his responses to leading questions, McGuigan seemed to have a vivid recollection of what Lee said to him. Also, Lee seemed to be going out of his way to show that he was indifferent to McGuigan's attitude toward the Union. This effort casts doubt on the reliability of Lee's testimony. For his strong expressions of antiunion sentiment, as found earlier in this decision and in his testimony as quoted above, point to the probability that Lee would concern himself with a prospective employee's union sentiment and that he would be hostile toward prounion employees. Accordingly, I have credited McGuigan's testimony regarding Lee's remarks to him on September 21, 1992.

¹⁸ I would also find this interrogation violative of Sec. 8(a)(1) of the Act under the Board's policy expressed in *Rossmore House*, 269 NLRB at 1178 fn. 20.

I also find that the warning that union supporters Tom Boyes and Dale Salsbury would not be there much longer because of their support for the Union was likely to restrain and coerce McGuigan in the exercise of his right to assist Local 429. For, he was likely to conclude from that remark that President McQuaide was about to discharge the two employees to punish them for helping Local 429. At this point, McGuigan could reasonably fear that the same fate would befall him, if he opted to support a union at McQuaide. Lee's further statement that he did not want anything to do with "anyone who is supporting any union," would confirm McGuigan's fear. I find that by Lee's warning and this additional remark, McQuaide again violated Section 8(a)(1) of the Act.

On January 9, 1993, employee Hunter and 150 to 200 McQuaide employees attended a vacation pick meeting at a restaurant near McQuaide's Johnstown terminal. In the course of the meeting, Executive Vice President William McQuaide read aloud some unfair labor practice charges which had been filed against McQuaide. After he had stopped reading, an employee asked him when the employees would receive a wage increase. William answered: "As long as these labor charges are hanging over our heads, we can't even discuss wages." When asked how long it would take to clear up the unfair labor charges, William told the assembled employees that it was up to the men who filed them.¹⁹

The Board has recognized that an employer violates Section 8(a)(1) of the Act by conditioning the granting of economic benefits to its employees upon the withdrawal of unfair labor practice charges. *Arrow Molded Plastics*, 243 NLRB 1211, 1218 (1979), *enfd.* in pertinent part 653 F.2d 280 (6th Cir. 1981). Here, Executive Vice President McQuaide suggested to McQuaide employees that pending unfair labor practice charges were interfering with their possible wage increase and that fellow employees, who filed the charges were to blame for this interference. Thus, William was holding out the prospect of a wage increase conditioned upon the withdrawal of pending unfair labor practice charges against McQuaide. By this attempt to interfere with its employees' right to utilize Board remedies, McQuaide violated Section 8(a)(1) of the Act.

¹⁹ In making my findings of fact regarding William McQuaide's responses to employee questions about a wage increase, I relied on Randy Hunter's testimony. On direct examination, counsel for McQuaide asked William "tell us what you said at this meeting?" At first, William was evasive, as he fenced with the question, and came up with a nonresponsive answer. I prodded William to give his "best recollection." Counsel for McQuaide took over the questioning again. William admitted that he strayed from a typed set of remarks by reading "the current unfair labor practices which were pending." He also conceded that he departed from the typed remarks to announce the initial hearing date for this proceeding. The printed remarks included the statement, "Because of legal uncertainties—we can not discuss any changes in wages or discuss the Union." William's penchant for straying from the typed remarks, and my impression that he was not giving his full recollection cast doubt on McQuaide's denial that William McQuaide made the unlawful remarks attributed to him by Hunter. Moreover, of the two, Hunter seemed to be the more candid witness. Accordingly, I have credited Hunter, where their testimony differed.

C. *The Alleged Discrimination*

1. John Pine

a. *The facts*

McQuaide has employed John Pine as a shuttle driver out of its Columbiana, Ohio facility since 1988. His duties include hauling, normally, two 8-foot trailers referred to as “pups” between Columbiana and McQuaide’s Johnstown terminal. Once he arrives at Johnstown, Pine breaks up the pups, backs them into a dock, does his paperwork, and refuels his tractor. After turning his paperwork in at the dispatch window, Pine sometimes takes his tractor to the garage for servicing or repair.

In September 1991, Pine became aware of Local 24’s organizing campaign from fellow employees Robert Marshall and Thomas Boyes, who were actively supporting the campaign. Marshall and Boyes gave union authorization cards to Pine for distribution to other Ohio drivers. Pine signed one of the cards for Local 24 and passed the remainder to other employees.

As found above, in September 1991, Pine, in conversation with Dock Foreman Locker, spoke out in favor having a union at McQuaide. Locker warned Pine that organizing a union would provoke McQuaide into shutting down. Further, Locker warned that if Pine engaged in union activity, he would be fired. Over the months between September 1991, on about 12 occasions, Locker warned repeatedly warned that Pine would lose his job, talking about the Union.

Despite Locker’s warnings, Pine actively assisted Local 24’s and Local 429’s organizing campaign at McQuaide’s Johnstown terminal. After September 1991, until November of that year, Pine passed out authorization cards which he received from employees Jack Boyes and Robert Marshall. Pine gave cards to mechanics, dock workers, and drivers. He obtained approximately 60 signed authorization cards, which he turned back to either Jack Boyes or Robert Marshall. Pine attended a union meeting, in the vicinity of Johnstown, on January 11, 1992, where he signed an authorization card for Local 429. He attended a second union meeting in June 1992, at Windber, Pennsylvania, also near Johnstown.²⁰

Before October 30, 1991, Pine’s job duties required him to work on the dock at Johnstown, helping to load and unload trailers. I find from the testimony of John Pine and Jack Boyes that on or about that date, two supervisors, Dock Foreman Vallie Baker and Anthony Kostyk, approached them and, without explanation, instructed Pine and Boyes to stay off the dock and wait either in their trucks or at the dispatch office. I find from Johnstown employee Joseph Patula’s testimony that in early December of the same year, Foreman Kostyk told Patula and another employee not to talk to either John Pine or Jack Boyes, and that Pine and Boyes were restricted from the dock. When Patula asked the reason for this order, Kostyk said he was only telling what he was told “from upstairs.”

At approximately 10 p.m., on January 13, 1992, Pine arrived at McQuaide’s Johnstown terminal driving a tractor hauling two pups from Columbiana. Pine carried out his usual tasks in about 1 hour. He broke up his pups, backed

them into the dock, did his paperwork, fueled the tractor, left his paperwork at dispatch, and drove the vehicle to the garage service area, arriving at about 11 p.m. Approximately 90 minutes later, Pine moved the tractor to another service bay for the repair of tail lights and a front-end check, all of which consumed about 1 hour.²¹

Pine drove his tractor to the dock area, where his trailers were being loaded. He left the tractor, went into the dock building, where he remained for approximately 15 minutes, while the tractor’s engine was idling. On learning that his load was not ready, he drove his tractor across the yard to a fence near the dispatch office, shut the engine off, dismounted, and went into the cafeteria. After approximately 30 minutes’ wait in the cafeteria, Pine’s trailers were ready. He hooked them to his tractor and returned to Columbiana, Ohio.

On the following evening, Pine reported to Johnstown dispatch, where he received an employee warning notice for idling on the previous night. Pine left the warning at the dispatch office, went to the cafeteria for approximately 15 minutes, and returned. When he picked up the warning, he noted that the inscription “idling for hours” had been added above the original statement alleging Pine’s misconduct. Mark McQuaide issued the warning, which carried Stan McQuaide’s approving signature.

I find from Stan McQuaide’s testimony and McQuaide’s “Company Rules and Regulations For Company Drivers” that at all times material to these cases, McQuaide has prohibited its drivers from idling truck engines except in certain circumstances not present when Pine let his truck idle on the night of January 13, 1991. Further, McQuaide has shown enforcement of that policy against employees whose union sentiment were unknown to it. Thus, McQuaide introduced into evidenced three employee warning notices, which it issued to employees for “Idling truck while checking out.” I also received in evidence, a fourth warning notice charging an employee with: “Idling your truck at Bethel when getting unloaded.”

However, the credited uncontradicted testimony of former employee James Moore shows that during his employment at McQuaide, which extended from 1988 until March 1992, the no-idling rule was not consistently enforced. I also find from Moore’s testimony that on the night Pine received his written warning, several other vehicles were idling in front of McQuaide’s Johnstown dispatch office, where Moore worked. Yet, as far as Moore knew, no one was disciplined for that idling.

b. *Analysis and conclusions*

The General Counsel argued that McQuaide issued a written warning to Pine on January 14, 1992, because of his union activity, and that the reason offered by McQuaide was pretextual. McQuaide seeks to avoid a finding that the warning issued to Pine was not in response to union activity or prounion sentiment, by showing that the employee violated a longstanding company policy and was treated no worse than other employees whose union sentiment was unknown to McQuaide when it disciplined them.

²⁰ I based my findings regarding Pine’s employment and his union activity on his and Jack Boyes’ testimony.

²¹ My findings of fact regarding Pine’s activity on the night of January 13 and 14, 1992, are based on his uncontradicted testimony.

Under Board policy, if the record shows that McQuaide's hostility toward union activity was a motivating factor in a decision to take adverse action against an employee, the adverse action will be found unlawful unless McQuaide shows, as an affirmative defense, that it would have taken the adverse action even in the absence of the protected activity. *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 402-403 (1983), affg. *Wright Line*, 251 NLRB 1083 (1980), enf'd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Where it is shown that the business reason or reasons advanced by McQuaide for its actions were a pretext—that is, that the reasons either do not exist or were not in fact relied on—it necessarily follows that McQuaide has not met its burden and the inquiry is logically at an end. *Wright Line*, supra at 1084.

Pine's prounion sentiment came to McQuaide's attention in September 1991, when he told Foreman Locker that a union would be good of McQuaide. Given Lee's demonstrated anxiety about, and hostility toward, union organizing among his employees, and his active role in McQuaide's daily operations, I find that Locker quickly informed his superiors, including Lee, about Pine's prounion sentiment. Further, during the next 2 months, Pine distributed union authorization cards at Johnstown, McQuaide's headquarters.

McQuaide's hostile reaction to Pine's expressed support for the Union was immediate. In September 1991, Foreman Locker unlawfully warned Pine repeatedly of economic reprisals by McQuaide, including shutting down the Company if the Union succeeded in organizing its employees, and discharging Pine, because he talked about the Union. After September 1991, and until 1993, Locker repeatedly showed McQuaide's willingness to resort to unlawful reprisals by warning Pine that his prounion talk would cost him his job. Locker's repeated threats showed that McQuaide was annoyed by Pine's open support for the Union.

Lee's phone call to John Pine in April 1992, as found above, included an unlawful threat to discipline Pine, if he continued to wear a Teamsters hat. Thus, did Lee show that McQuaide's top leadership was likely to seek a pretext to discourage Pine from openly assisting the Union.

Comparison of the language in the employee warning notice issued to Pine on January 14, 1992, with what he actually did, suggests that McQuaide was anxious to inflate the gravity of Pine's alleged misconduct. Pine's credited testimony showed that he idled his tractor for about 15 minutes on the night of January 13, 1992. There was no showing in the record before me that Pine idled his truck for hours or even 1 hour. McQuaide presented no eyewitness to support its claim that Pine idled his truck on January 13, 1992, for 1 hour or any hours. Nor was there any showing that Mark McQuaide, Stan McQuaide, or any other member of McQuaide's management or employee complement said anything to Pine on or since the night of January 13, 1992, about his idling on that night.

Indeed, I find from Pine's testimony that McQuaide originally treated his idling as a routine violation of its rules. On the night of January 14, 1992, after he saw the warning at McQuaide's Johnstown dispatch office, however, Pine left it there briefly as he visited the cafeteria on the premises, and returned to pick it up. When Pine returned to the dispatch office, he saw that someone in that office had added "Idling for Hours." McQuaide has not offered any explanation of

how the added verbiage came to be on Pine's warning notice. McQuaide's dispatchers, however, are admitted supervisors. Further, the Johnstown dispatchers' office is under management's control. Given McQuaide's knowledge of Pine's prounion sentiment and its demonstrated union animus both before and after January 14, 1992, I find, from these circumstances, that a member of McQuaide's management wrote the additional language on Pine's warning notice on the night of January 14, 1992, to claim a more serious violation, which might be used to justify more severe discipline if he engaged in further misconduct.

McQuaide contended that the record did not show that Pine suffered disparate treatment for his misconduct of January 13, 1992. I do not agree.

In support of its position, McQuaide provided employee warning notices for four employees, which it issued to them for idling their respective trucks. Indeed, one of the four in this group, Fred Bradley, idled his truck on January 13, 1992, and received a warning notice on the following day. None of the four warning notices in this group, however, carries the embellishment "Idling for hours" or any other suggestion that someone in management had sought to increase the seriousness of the alleged misconduct. Thus, far from assisting McQuaide's defense, the four warning notices show that Pine suffered disparate treatment.

Moreover, I find from the uncontradicted testimony of former McQuaide employee James Moore, who worked for McQuaide from 1988 until he quit in March 1992, that the no-idling rule was not consistently enforced. Indeed, on the night Pine received his warning, several vehicles were idling in front of Moore's office, at the Johnstown terminal, and to Moore's knowledge, none of the drivers of those vehicles received any discipline from McQuaide. I find that Pine also suffered disparate treatment when McQuaide enforced its no-idling rule against him. *Pepsi Cola Bottling Co.*, 301 NLRB 1008, 1050 (1991).

In sum, I find that McQuaide seized on Pine's brief interlude of idling on the night of September 13, 1992, as a pretext for burdening his personnel record with a warning for a serious violation of company rules. I also find that McQuaide acted against Pine in this manner to punish him for, and discourage him from, engaging in union activity and supporting the Union, and thereby violated Section 8(a)(3) and (1) of the Act. Id. at 1024.

2. Robert Marshall

a. *The facts*

At the time McQuaide discharged him on November 5, 1991, Robert Marshall had been a city truckdriver, working out of its Columbiana, Ohio facility for 3 years. His work took him to Akron, Cleveland, Youngstown, and other points in Ohio. He delivered and picked up freight using a tractor and a pup trailer.

In 1991, prior to his involvement with the Union, McQuaide disciplined Marshall twice. On April 23, 1991, Marshall, contrary to his orders, did not make deliveries to 11 of the 18 Dairy Mart stores in the Akron/Canton area of Ohio. Further, contrary to company rules, he did not notify the dispatcher that he had not made the 11 deliveries. Stan McQuaide warned Marshall that he was not to bring a shipment back unless he had authorization from a dispatcher.

Stan also warned him about not telling a dispatcher the truth that he had not made all of his assigned deliveries.²²

In the spring of the same year, McQuaide directed all of its Columbiana drivers to fax their paperwork to Johnstown. Shortly after this direction was in effect, Stan learned that one driver, Marshall, was not faxing his paperwork. He sent word that Marshall was to contact him. In their conversation, Stan instructed Marshall to fax. Marshall agreed to do so.

A few days later, Stan learned that Marshall had not been faxing, as promised. In a telephone conversation, which soon followed, Stan explained the purpose of having the fax machine, and again requested that he use it. A week went by, and Marshall had not used the fax machine. Stan repeated his request and Marshall again agreed to use it. Two days later, Stan learned that Marshall was not faxing. Stan spoke to him again, warning Marshall that unless he faxed his bills in every day "you're fired."²³

Marshall was one of the original union activists among the Ohio drivers. He visited Local 24 in September 1991, where he obtained union authorization cards. He distributed cards to his colleagues, John and Ron Pine, who signed and returned them to Marshall, who, in turn, returned them to Local 24. Marshall signed an authorization card for Local 24 on September 10, 1991. In October 1991, he signed an authorization card for Local 429.

On October 18, 1991, Marshall attended the entire Board hearing in Case 8-RC-14639, regarding Local 24's representation petition. Local 24 called Marshall as a witness on its behalf. Marshall testified regarding McQuaide's management, operations, and employment policies. Lee McQuaide also was present. In his testimony before me, Lee admitted that at least by October 18, 1991, he knew that Bob Marshall was a union supporter.

Following the representation hearing, Marshall began passing authorization cards out to Columbiana driver John Pine and to Johnstown-based drivers Randy and Pat Hunter. During the next few weeks leading up to his discharge, Marshall continued to solicit signatures on authorization cards from McQuaide employees.

Prior to October 31, 1991, Bob Marshall made pickups and deliveries for McQuaide at Little Tykes, in Stow, Ohio. During 1990 and 1991, he stopped at Little Tykes four or five times weekly. On October 31, 1991, his duties included a pickup at Little Tykes.

Marshall picked up his trailer at Columbiana on October 31, and proceeded to Leetonia, Ohio, where he picked up three or four skids of plastic products, which he placed in the front of his trailer. His next pickups were at N & D, at Queensburg, Ohio, and at Ohio Distribution, in Akron. At Ohio Distribution, Marshall loaded shrink-wrapped skids of

envelopes. The skids used on Marshall's loads were each 4 by 4 feet. Marshall moved the skids of envelopes, which were 5 or 6 feet high, to the middle of his trailer. He made a pickup of three or four skids of pails of carwash soap at Ohio Chemical, in Akron, which he placed in the back of the trailer.

After his Ohio Chemical pickup, Marshall telephoned Dispatcher Jack Instone, who directed him to a pickup at Little Tykes. Marshall told Instone that he had room for only two or three skids. Instone advised Marshall to do the best he could.²⁴

Marshall proceeded to Little Tykes, where he found at least 100 pieces of loose freight in boxes of varying sizes. He used his judgment to load the Little Tykes freight so that he would not walk on a load of envelopes in the middle of his trailer.²⁵ He had no room in the front of the trailer, where he had a shipment of plastic products. He loaded all but 25 or 30 pieces on the rear portion of his trailer and decided that he had no space for them. Marshall phoned, said he was full, and received Instone's permission to return to Columbiana.

According to Customer Service Manager Donald McMullen, on the afternoon of October 31, 1991, he received a telephone call from "Doc," the shipping manager from Little Tykes, who complained that a McQuaide driver was refusing to load all the freight. McMullen testified that when he asked why the driver was refusing, "Doc," whose name is Thomas Dougherty, answered: "Because he's a lazy son-of-a-bitch." McMullen testified that he assured Dougherty that he would look into the matter.

I find from McMullen's uncontradicted testimony that he checked with the dispatcher, learned that Marshall had reported a full trailer, and that Instone had told Marshall to bring the trailer in. I also find from McMullen's testimony that he quickly reported the complaint to Stan McQuaide.

McMullen testified that on the same afternoon, he called Dougherty back to assure him of McQuaide's concern about the pickup. In response, according to McMullen, Dougherty said in substance that "this man has screwed McQuaide's in

²² My findings regarding the Dairy Mart incident are based on Stan McQuaide's detailed testimony, which found corroboration in McQuaide's written report of the misconduct and the verbal warning. In response to a leading question, Marshall denied that McQuaide had disciplined him prior to October 31, 1991. As Stan McQuaide did not seem to be embellishing the written report, and otherwise seemed to be testifying frankly, I have credited his testimony in this regard.

²³ According to Marshall, he cannot recall that prior to October 31, 1991, any McQuaide official ever threatened to fire him. However, I have rejected that denial and have credited Stan McQuaide's detailed and frank testimony regarding the fax incident.

²⁴ On direct examination, counsel for McQuaide asked Dispatcher Instone if he could recall any conversation with Marshall "prior to the time that he got to Little Tykes where the topic was how much load he had." Instone answered: "No." However, he did not deny speaking to Marshall after the Ohio Chemical pickup. On cross-examination, Instone conceded that he has approximately 500 telephone and radio conversations per day, that he tries to put each day's calls out of his mind and that he doesn't remember what was said in each conversation. In these circumstances, I find it likely that Instone would not remember at the hearing before me, on July 13, 1993, whatever Marshall might have said on October 31, 1991, about the extent of his load on leaving Ohio Chemical. This doubt as to the reliability of Instone's recollection plus my impression that Marshall testified candidly, and with certainty, about his own work on that date caused me to reject Instone's testimony where it conflicted with Marshall's.

²⁵ I find from John Pine's testimony that at all times material to these cases, McQuaide has had a sign posted at its Johnstown terminal directing employees not to walk on freight. Stan's testimony was to the effect that McQuaide permitted employees to walk on freight when necessary. He, however, admitted on cross-examination that drivers should not walk on envelopes, and that the stacking of one type of freight on top of another was a matter of judgment.

the past, but now he was screwing Little Tykes and he couldn't live with that."

Dougherty's testimony regarding his conversations showed that his remarks were much more restrained than McMullen's testimony had portrayed. Dougherty testified that he called McQuaide, spoke to someone at customer service about the freight left on Little Tykes' dock, suggested that the man could have found room for it on his truck, and asked for a pickup. Absent from Dougherty's version of his remarks, was any reference to Marshall as a "lazy son-of-a-bitch." Nor did Dougherty's testimony show that his remarks to McMullen included, any allegation that Marshall had screwed McQuaide and Little Tykes, or the statement that Dougherty could not live with Marshall's asserted faulty performance.²⁶

On the night of October 31, 1991, John Pine hauled two pups, including Robert Marshall's trailer, on the shuttle run to Johnstown. After Pine broke up the two pups and backed them into the dock, he noticed Dock Foreman Val Baker opening the rear door of Marshall's trailer, with a camera in hand.

Pine jumped up onto the dock and looked into the rear of the open trailer. Pine saw loosely packed boxes extending across the trailer's rear, and stacked about 1 foot or 1-1/2 feet from its ceiling.

Foreman Baker did not take a picture of the trailer or its load, as it appeared when he first opened the trailer's door. Baker took a picture of back of the trailer load, only after he and Pine had pulled anywhere from 6 to 10 boxes from the trailer's rear and set them on the dock. In his testimony, Baker admitted removing about 10 boxes from the rear of the trailer "to get a picture because they were all stacked up so high and we wanted to get a picture of the rest of the pup." After moving a few more boxes out of the way in the back of the trailer, Baker then went into the trailer, and, in possible violation of McQuaide's posted policy, walked on freight to get to the middle of the trailer, where he took a second picture.²⁷ Finally Baker, again walking on freight, moved to the front of the trailer, where he took another picture of the freight.

I have reviewed Val Baker's three clear pictures. The pictures all show space for more freight. However, I cannot determine whether the space shown would have accommodated some or all of the freight which Marshall left at Little Tykes on October 31, 1991. Neither Val Baker nor any other McQuaide supervisor or employee testified that those pictures showed that Marshall could have taken the entire Little Tykes shipment on that date.

²⁶ Dougherty seemed to be giving his best recollection of his conversation with McMullen on October 31, 1991. McMullen was not as careful when it came to the details of Dougherty's remarks. McMullen used "lazy son-of-a-bitch" and "screwed" to summarize portions of Dougherty's remarks. Also, McMullen seemed anxious to put a bad light on Marshall's conduct. In contrast, Dougherty testified in a detached manner. Accordingly, I have credited Dougherty's version of his remarks to McMullen.

²⁷ Stan McQuaide testified that there are signs on the Johnstown dock asking employees not to walk on freight "unnecessarily." At first, Stan testified that the signs were there for only the dock workers. However, he later testified that the policy applied to drivers as well.

On November 1, 1991, Stan McQuaide looked at Val Baker's pictures, concluded that "if you moved a few cartons, three-quarters of the truck more than halfway up was empty." Without more, he confronted Marshall later that day, asserting that he "had pictures that clearly showed that [Marshall] wasn't full, and with a little bit of effort [Marshall] could have very easily put those cartons on."

Marshall defended his decision to leave the cartons at Little Tykes, first arguing that the truck was full. When Stan said he had pictures refuting that claim, Marshall claimed that he had no help to load the freight. Stan rejected that excuse, on the ground that it was Marshall's responsibility to load the freight, which was made up of light plastic toys. Stan stated that the only reason he knew about the freight being left at Little Tykes was because the shipper, Little Tykes, had called.²⁸

Stan telephoned Lee McQuaide and explained what had happened. He said, "You and I both know that Bob Marshall, who he is and what he's done." Stan testified that he and Lee "wanted to be very careful that we handled it properly, and it was my suggestion that before we did something in discipline that we would contact our attorney and get some advice." Lee agreed.

On Monday, November 4, 1991, Marshall reported for work at Columbiana and, finding no pup trailer assigned to him, called in to the Johnstown dispatcher, who told him to call back at 9 a.m. Marshall called back at 9 a.m., and spoke to Stan McQuaide, who told him to call Lee McQuaide. Marshall contacted Lee, who told him to call back the next day.

When Marshall called back, Lee asked him why he had not made the pickup at Little Tykes. Marshall answered that he was full. Lee rejected that, answer adding that he had pictures showing Marshall's trailer "was two thirds empty" Lee then went on:

You could put Little Tykes on top of the material that you had in the trailer, which covered about a third of the floor space, and in addition to that, you had two-thirds left that you could stack the material.

Conceding that he might have had space, Marshall argued that Little Tykes would not help him load. Lee said it was Marshall's job to load the freight, not the shipper's. Marshall complained that he couldn't stack the shipment because it was too heavy. Lee rejected that assertion, pointing out that the cargo was "very, very light" toys.

Marshall argued that he was doing the best job for McQuaide that he could. Lee answered, "Well, I don't call that doing the best job by far." Lee then terminated Marshall.²⁹

²⁸ Marshall testified, in substance, that as far as he could remember he did not have any conversation with Stan McQuaide on November 1, 1991. However, Stan provided a detailed and plausible account of such a conversation. Accordingly, I have credited Stan's testimony in this regard.

²⁹ According to Marshall's testimony on direct examination, Lee discharged him without giving any reason. On cross-examination, Marshall admitted that on November 4, Lee told him that McQuaide's opinion was that he did not load enough freight at Little Tykes on October 31. Marshall also testified that he told Lee that he did the best he could. Marshall's sparse recollection of admitted confrontations with Stan and Lee during early November 1991, and

Continued

b. Analysis and conclusions

The General Counsel argues that Marshall's union activity and participation as a witness in the representation proceeding on October 18, 1991, motivated Lee to discharge him on November 5, 1991. McQuaide urges dismissal of those allegations on the ground that the employee's job performance was Lee's only consideration when he confronted Marshall on that occasion. I find merit in the General Counsel's contentions.

By October 18, 1991, Lee McQuaide and his brother Stan were aware of Marshall's union activity. On that same date, Lee attended a Board hearing on the Union's petition for a representation election among McQuaide's drivers. Marshall testified at that hearing as a witness for the Union. In light of Lee's animosity toward the Teamsters, I find it likely that Marshall's active support for the Union irked President McQuaide and his brother, Stan. I also find it likely that Marshall's union activity and testimony at the Board hearing further aroused Lee's and Stan's hostility.

Before learning of Marshall's support for the Union, McQuaide tolerated his shortcomings. In late April 1991, when he failed to make 11 of the 18 deliveries to Dairy Mart stores, and neglected to tell a dispatcher the truth about the returned freight, Stan gave Marshall a verbal warning. However, Stan did not expressly warn of discharge if Marshall repeated such conduct.

Also, in the spring of 1991, Stan McQuaide did not discharge Marshall for ignoring repeated instructions to fax his daily paperwork to Johnstown. Marshall had twice failed to carry out promises to fax his paperwork to Johnstown. Stan spoke to him a third time and threatened to fire Marshall if he did not fax that day and everyday thereafter.

Thirteen days after Lee McQuaide saw Marshall helping the Union's organizing effort, McQuaide lost patience with him. A telephone call from Dougherty, a leadman, at Little Tykes to Customer Service Manager McMullen gave McQuaide an opportunity to discipline Marshall.

By the time Pine arrived at Johnstown, Foreman Val Baker was ready with a camera. Baker did not take a picture of the rear of the trailer, which was piled high with cargo. He saw to it that several boxes were removed to show more empty space. He took a picture of the space over a cargo of envelopes where company rules discouraged walking or piling cargo. He took a third picture of space in the front of the trailer, where Marshall could not have placed Little Tykes' cargo without walking on the envelopes. From those three pictures, and Dougherty's complaint, Lee and Stan McQuaide determined that there was more than enough room to accommodate the 30 unseen boxes which were left on Little Tykes' dock. Stan looked at the three pictures and testified: "[I]f you moved a few cartons, three-quarters of the truck more than halfway up was empty."

Lee also concluded from those three pictures, alone, that Marshall had covered only one-third of the trailer's floor

my impression that he was not conscientiously searching his memory cast doubt on his testimony regarding their remarks to him during those interludes.

Lee testified in a frank manner, and gave a detailed account of his conversations with Marshall on November 4 and 5. Accordingly, my findings of fact regarding those conversations rest on Lee's testimony.

space with cargo and "had two-thirds left that you could stack the material." McQuaide did not show how Lee arrived at his estimates of open space. Nor did McQuaide ever show on the record that the 30 containers of Little Tykes products which Marshall did not load would have fit in his pup.

McQuaide was anxious to punish Marshall. Stan and Lee were willing to rely on an incomplete investigation. Stan and Lee relied on three sketchy photos to estimate available cargo space, without regard for the possible impact of loading cartons of toys on top of the envelopes, or of Marshall's walking on the envelopes. Neither Stan nor Lee explained how Marshall could have loaded the entire Little Tykes shipment on his pup without harming the envelopes.

According to Stan McQuaide, one of the reasons for Marshall's discharge was that McQuaide had to send another truck to pick up the remainder of the Little Tykes shipment. However, the record shows that McQuaide warned dock employee Joe Sodano twice, once in 1990 and once in 1991, for loading errors which resulted in the dispatch of another truck to make a delivery. In 1989 and 1991, respectively, dock employees Neff and Reese each received a written warning after their mistakes in loading resulted in the dispatch of a truck on a special run. Stan testified that the difference between the dock workers' misconduct and Marshall's was that the dock workers forgot and Marshall "deliberately didn't load the freight."

However, earlier in the year, when Marshall "deliberately" made only 7 of 18 scheduled deliveries, had not disclosed this fact to the dispatcher, and had buried freight, Stan was not provoked to discharge him or even threaten to discharge him. In October, after Stan and Lee had satisfied themselves that he was a union supporter, and had decided that the good of the Company required them to get rid of Marshall, his departure from one pickup where he "deliberately" left some 30 boxes was enough to provide a reason for discharge.

Given Lee's and Stan's union animus, this harsher response to Marshall's failure to pick up 30 boxes at Little Tykes suggests that the employee's union activity and support for Local 24's election petition were the catalysts.

At the hearing, Stan McQuaide testified that a further reason for Marshall's discharge was that he lied to the dispatcher on October 31, when he claimed that his truck was full. Lee testified that he fired Marshall because he "just didn't do his job and he didn't seem too concerned about it either, that he didn't do it." Lee then added that Marshall had lied to him in three respects in their terminal conversation on November 5. Lee did not mention any lie to the dispatcher. Instead, he characterized as lies Marshall's assertions that "he didn't have room"; that Little Tykes wouldn't give him any help; and that "he couldn't stack it up high." This inconsistent testimony by the two company officials who decided to discharge Marshall cast doubt on their claim that Marshall's lying was a reason for his discharge.

In view of the other factors, which I have recited above, I find that McQuaide's explanation of Marshall's discharge on November 5 was pretextual, and that his support for the Union, including his presence at the Board's representation hearing on October 10, motivated Stan and Lee McQuaide.

Accordingly, I find that by discharging Marshall, McQuaide violated Section 8(a)(4), (3), and (1) of the Act.³⁰

3. Thomas Boyes, Jack Boyes, Dale Salsbury, and David McGuigan

a. *The facts*

McQuaide hired Dale Salsbury on March 4, 1991. He worked out of McQuaide's Richfield, Ohio terminal, delivering and picking up freight in the Cleveland, Ohio area.

During the same month, McQuaide hired Thomas Boyes (Tom) as a driver to work with Dale Salsbury and another driver named Al. Lee McQuaide interviewed Thomas and gave a driving test to him before hiring him in 1991. During the driving test, Lee said that McQuaide was not "a union outfit" and warned that he would never employ a union driver behind the wheel of his truck.³¹

During his employment at Richfield, Tom picked up and delivered freight around Cleveland and northeast Ohio, and drove the shuttle run between the Richfield terminal and McQuaide's Johnstown terminal. The shuttle consisted of two 28-foot trailers and a tractor. A Richfield-based driver would drive the two pups to Johnstown in the evening, loaded with Ohio freight and return early the next morning with freight for distribution in Ohio.

In April 1991, Tom's son, Jack Boyes, replaced Al as a driver at the Richfield terminal. Jack became the primary shuttle driver between Richfield and Johnstown.

The three Richfield drivers became involved in Local 24's campaign in September 1991. Tom was one of the McQuaide drivers who contacted Local 24 in early September 1991. Tom went with employee Robert Marshall to visit Local 24 President John Mozena to discuss organizing McQuaide's Ohio drivers. Tom received a quantity of Local 24's authorization cards from Mozena, and distributed some of them to Jack Boyes and Dale Salsbury. Tom solicited and obtained signed authorization cards from McQuaide employees. Tom signed a union card on September 11, 1991, and turned it over to Mozena along with Dale's signed card. On October 18, 1991, Tom attended the Board's representation hearing along with Bob Marshall and Lee McQuaide. Tom did not testify at the representation hearing.

On October 18, 1991, Mozena suggested that Marshall and Tom begin organizing McQuaide's Pennsylvania drivers. Tom and his son Jack took authorization cards from Local 24 to McQuaide's Bethel and Johnstown terminals. By November 14, 1991, they had obtained approximately 129 signed cards from the employees at those locations. Tom obtained 50 or 60 of those signatures. Tom and Jack gave union authorization cards to Johnstown employees Randy Hunter, Ray Webb, and Barry Michalides for distribution and

signatures. Tom turned the signed cards over to John Mozena, who submitted them to the Regional Director for Region 8. Tom and his son Jack held a meeting with McQuaide's Bethel drivers in November 1991, where the two distributed authorization cards and obtained a number of signatures. Jack also attended two union meetings in the Johnstown-Windber, Pennsylvania vicinity in November 1991. He wore a hat with Local 24's name on it.

Beginning in December 1991, and thereafter, Tom supported Local 429. On January 11, 1992, Tom signed an authorization card for Local 429. Tom continued to hand out Local 429's authorization cards to McQuaide employees. As he drove the shuttle, McQuaide employees would occasionally give him signed cards, which he mailed to Local 429.

Jack Boyes supported the union campaign, first among McQuaide's Ohio drivers, and later among both the Ohio drivers and McQuaide's Pennsylvania drivers. Tom obtained a signed authorization card for Local 24 from his son, Jack, on October 11, 1991. Jack distributed 70 or 80 authorization cards for Local 24 and obtained signatures on them from dock workers, truckdrivers, and mechanics at McQuaide's Johnstown terminal. He wore a baseball cap with "Local 24" on it.

When Local 429 took over the campaign, Jack remained a union activist. On January 11, 1992, he signed an authorization card for Local 429. Jack also passed out 70 to 100 cards for Local 429. He received them by mail, from a dock worker, and from Tom. Jack wore a baseball cap with the Teamsters' logo on it. Jack attended meetings which Local 429 held for McQuaide's employees. At the Board-held election, on June 27, 1992, Jack was Local 429's observer.

On September 10, 1991, Dale Salsbury signed a card for Local 24, which he had received from Tom Boyes. In the autumn of 1991, Dale wore a Teamsters hat and a pin that said: "Stop Scabs." On December 26, 1991, Dale signed a card for Local 429 and returned it to Tom Boyes. He attended meetings called by Local 429 in April 1992. Dale distributed cards for Local 429 to McQuaide drivers from Pennsylvania, who came to the vicinity of Cleveland. He returned signed authorization cards to either Tom or to Jack.

Salsbury found opportunity to express support for the Union. During the preelection campaign, he jokingly urged Dispatcher Jack Instone to vote union. Salsbury took advantage of the company radio in his cab to discuss the Union with other McQuaide drivers. On occasion his radio was audible at McQuaide's Johnstown facility.

McQuaide's management perceived Dale and Tom as leading union activists. On January 20, 1992, Robert Wernli, a McQuaide sales representative, told Lee and Stan McQuaide, and McQuaide's vice president of sales, Gary Brennan, that Dale and Tom wanted to discuss the Ohio operations with Stan. Lee responded that he considered them to be the union instigators and he had nothing to say to them.

A few weeks prior to the Board-held manual election, on June 27, 1992, during a phone conversation with Dale, Lee McQuaide spoke of the Union in uncomplimentary terms. Lee said the Union was no good, that it would not work, and that it would be harmful for McQuaide.

As found above, in September 1991, Jack Boyes and John Pine told Dock Foreman Ron Locker that they were organizing for Local 24. Locker warned them that McQuaide would discharge them for engaging in such activity and that even

³⁰ My findings that Marshall's testimony, under oath, in this proceeding was false did not disqualify him from receiving backpay or an offer of reinstatement under a Board remedial order. *ABF Freight System v. NLRB*, 114 S. Ct. 835, 839 (1994).

³¹ Lee McQuaide testified that he did not recall his conversation with Thomas Boyes. However, Lee conceded that as a matter of practice, during the hiring process, he tells new drivers that McQuaide is a nonunion company and that he wants it to stay that way. This admission and Lee's anti-Teamsters comments at the hearing before me lend support to Thomas Boyes' testimony about that conversation, which I have credited.

if they organized successfully McQuaide would shut down and open up later as nonunion.

The two employees distributed union cards openly at McQuaide's Johnstown facility. On October 31, 1991, Dock Foremen Val Baker and Tony Kostyk enjoined Boyes and Pine from being on the Johnstown dock. After about 2 months, however, they were again on the dock.

In early January 1992, while Jack Boyes' tractor was in the Johnstown garage for an oil change, a quantity of union authorization cards fell from the cab and scattered on the work floor. The lubrication supervisor, his assistant, and the body shop foreman picked some of them up.

In April or May 1992, Lee McQuaide, in a telephone conversation with Tom Boyes, gave vent to his sentiment toward the Ohio drivers. Lee said they were "nothing but union trouble," and that "you are all organizers over there and cause nothing but union trouble."

On the night of January 13, 1992, Jack kept his truck idling at McQuaide's Johnstown terminal for 45 minutes. On the following day, McQuaide issued a written warning notice to Jack for violating its prohibition of idling. At the time his truck was idling, Jack noticed another truck idling. He cautioned Tim, the driver of that truck, that he would get into trouble for idling. Tim replied that he always idled. Tim consulted Dispatcher Barry Horner, who allowed him to idle. The record did not disclose how long Tim idled his truck that night.

Beginning in January 1992, Tom, Jack, and Dale suffered a succession of layoffs and suspensions from their employment at McQuaide. On January 15, 1992, Jack notified McQuaide's Johnstown dispatcher that he would be unable to drive the shuttle that evening because his pregnant wife was not feeling well and had a fever. Jack said he would try to get his father, Tom, to drive the shuttle. In the meantime, Tom had called the same dispatcher to report off for the rest of the day, and was driving home through a snowstorm. Jack attempted to reach Tom, who was not home. Jack left a message with his sister, Becky, at Tom's home that he should call Jack when he came home. After about 1 hour, Jack called again, learned that Tom had not returned, and again asked Becky to have Tom return his call. At the same time, Jack's wife began to have pains again. As she was 7 days overdue, Jack took his wife to the hospital, where they remained until 2 or 2:30 a.m. on January 16.³²

Tom did not arrive home on January 15, until late evening. He found a note telling him that Jack's wife had gone into labor and that Tom's family had gone to the hospital. He received no message to call Jack. Nor did Tom receive any

word that McQuaide's dispatcher, Barry Horner, had called him earlier that same evening.

At about 7 a.m., on January 16, 1992, Tom learned from McQuaide Dispatcher Jack Instone that there had been no shuttle run during the night. Instone told Tom to call back later in the morning. When Tom called back, Stan McQuaide asked him to explain what had happened on the previous night. Tom said he didn't know and went on to explain his whereabouts and the plight of Jack's wife. Stan said he would investigate the matter.

Later, on the evening of the same day, after he had returned from making pickups, Tom phoned Johnstown. Barry Horner reported that Stan did not believe Tom's story and that he was suspended for 2 days. On the second day, Horner extended the suspension for 1 more day.

Jack also phoned Horner on January 16, and told about the previous night's problem with his wife and trying to get to Jack. The result was the same. Jack also received a 3-day suspension.

On Wednesday, February 5, 1992, four drums of liquid in a trailer which Tom had hauled from Richfield to Cleveland had frozen en route. Arriving at his Cleveland destination, Tom backed the trailer into an inside dock which had a hot airblower. When his trailer door was opened, Tom discovered that the drums had burst and were leaking. The instructions on the cargo and its bills of lading were to protect it from freezing. Tom reported the loss of cargo to McQuaide's Johnstown office.

McQuaide's cargo claims manager, Joseph Sepety, directed Tom to prepare an accident report. Tom testified that Sepety asked him to submit it in 12 days. Sepety testified that he asked that Tom submit the report as soon as possible. In any event, on February 10, when Sepety had not received the report, he became concerned. He advised Stan and Lee McQuaide of Tom's neglect to file the report. At Sepety's request, Dispatcher Instone reminded Tom "numerous times" about the report.³³

As of February 17, Tom had not submitted the accident report. Instone told Lee that Tom had not yet filed a report. I find from Lee's uncontradicted testimony that he ordered Instone to tell Tom that Lee McQuaide had to have that report. After a few more days, on learning that the report had not arrived, Lee directed that Tom be deprived of work until the report was submitted.

McQuaide withheld work from Tom on February 27. On that same day, he submitted the requested report on notebook paper, and was assigned work thereafter.

According to Jack Boyes, on the evening of March 18, 1992, he observed snow and icy road conditions in the vicinity of McQuaide's Richfield, Ohio terminal. Jack also testified that on the same evening, he observed a wreck blocking the intersection he would use to get on the turnpike with the shuttle to Johnstown.

He called the Johnstown dispatcher, Tom Rhoades, and described bad road conditions and blockage. Rhoades advised him to wait about an hour and call back. While Boyes waited, he testified that the intersection was cleared, but road conditions had worsened. Jack called the dispatcher and said

³² According to Dispatcher Horner's testimony, Jack's contact on the night of January 15, 1992, had been with Dispatcher Rhoades. Horner also testified about his efforts to contact Jack, first, by calling the shuttle and then by calling Jack's home, and then Tom, by calling Tom's home. Horner's testimony also shows that he knew that Jack had called off because his wife went into labor. Thus, his testimony about an attempt to call Jack on the shuttle radio seems illogical. I also noted that Horner seemed tentative as he testified about Dispatcher Rhoades' receipt of a call from Jack, and Horner's efforts to get in touch with Jack. In contrast, Jack Boyes seemed to be reliving the events of January 15 and 16, 1992, as he testified. Accordingly, I have credited his testimony that he called off to Horner and explained that he would make an effort to reach Tom and get him to drive the shuttle.

³³ I based my findings regarding Sepety's efforts to obtain the accident report, on his uncontradicted testimony, which he gave in a full and forthright manner.

that the tractor was stuck and that he was not bringing the shuttle in because of bad road conditions. Jack assumed responsibility for explaining his decision to Stan McQuaide.

That same evening, Dispatcher Rhoades reported Jack's decision to Stan McQuaide. The vice president instructed the dispatcher to send Johnstown drivers out to Ohio on the following morning to make deliveries and pickups, and to bring in the shuttle.

Early on the following morning, Jack telephoned Stan and offered to bring the shuttle to Johnstown. Stan said that Jack had "messed up the flow," that he should call Lee, and that another driver had already picked up the shuttle.³⁴

On the afternoon of March 19, Dispatcher Instone reported to Stan McQuaide that a Johnstown driver had found the shuttle truck with the pups attached, the engine running, the cab door open, and turnpike credit cards on the console. Stan concluded that Jack had not attempted to bring the shuttle in. Stan reasoned that had Jack gone to the Richfield terminal he would have shut off the idling and closed the cab door.

Stan also concluded that Tom and Dale had hooked the two pups to the shuttle tractor and had left the tractor idling. Stan believed that Tom and Dale normally left the tractor running with the expectation that Jack would shortly begin his shuttle run to Johnstown.

Following instructions, Jack called Lee, who said he did not believe that Jack ever went to Richfield on the previous day.³⁵ Jack insisted that he had. I find from Lee's uncontradicted testimony that he knew of "a couple of other instances where [Jack] wouldn't come in whenever the roads were a little bad."

I find from Lee's testimony that on the morning after Jack had refused to drive the evening shuttle Dispatcher Jack Instone told Lee that on that same evening Tom Boyes had coupled the pups for Jack and had left the truck running.³⁶ That same day, when Lee approached him about the idling, Dale Salsbury said he knew nothing about it.

On March 19, Stan and Lee conferred and exchanged their views as to what Jack and Tom had done on the previous evening. The McQuaides rejected discharges as the appropriate discipline in this instance because Jack and Tom were involved with the Union. Instead, Stan and Lee settled on brief suspensions as the appropriate punishment.

According to Lee, he suspended Jack for 2 days, March 19 and 20, 1992, for failing to go to the Richfield terminal and attempt to drive the shuttle. Lee also testified that he suspended Tom for 1 day on March 20, 1992, for idling Jack's truck.³⁷ I find from Lee's uncontradicted and credible

testimony that he feared that the idling of a tractor overnight could result in serious harm to the vehicle.

Under Federal law, all of McQuaide's drivers were required to have a commercial driver's license by April 1, 1992. McQuaide set March 28, 1992, as its own deadline. To qualify, a driver had to pass a driving skills test and a written examination. Under a grandfather provision, the skills test was not required for a driver with at least 2 years' experience operating the type of vehicle for which he was seeking the CDL. The law required that all drivers, regardless of experience, take the written examination.

Tom had his CDL at the time McQuaide hired him. As of March 28, 1992, Jack Boyes and Dale Salsbury had not obtained their CDLs. Jack needed a grandfathering form to waive the skills test. He submitted his form to Mark McQuaide on March 8 or 10, 1992. Dispatcher Rhodes obtained the completed form from Mark and returned it to Jack on March 27, 1992. Jack Boyes had arranged to take the written test on March 30, 1992, the first day of his vacation.

On March 27, Lee McQuaide telephoned Jack and instructed him to drive the shuttle over to Johnstown that evening, as usual, and then ride back with driver John Pine. When Jack questioned the motive for leaving his tractor in Johnstown and riding back with Pine, Lee said it was because Jack did not have a CDL. McQuaide paid Jack only for the 5-1/2 hours of driving and the time he spent at the Johnstown terminal. He received no compensation for the 5-1/2 hours he spent riding with John Pine. Jack took the test and obtained his CDL during his vacation, which began on March 30.

Tom, Jack, and Dale had arranged that, pending Jack's receipt of a CDL, Tom would drive the shuttle and Jack and Dale would work in Ohio. Dispatcher Jack Instone rejected that plan and said neither Jack nor Dale would work. Instead, for 1 week until Jack's return, Tom would work 1 day and Dale would work the next. McQuaide's records show that Tom did not work on March 31 and April 2, 1992, during Jack's vacation. Thus, did Tom lose 2 days' pay.

On April 3, 1992, Stan McQuaide authorized Tom to ride to the Johnstown terminal on one of McQuaide's trucks to pick up the tractor Jack had driven on March 27, 1992. Tom took the ride and drove the tractor back to Richfield. McQuaide paid him for the 5-1/2 hours' allowance for his drive to Richfield and his delay there. However, McQuaide did not pay him for the hours he spent riding to Johnstown with another McQuaide driver.³⁸ At the hearing, Lee testified that McQuaide did not pay Tom for his trip to Johnstown because "they had goofed it up, per se, and it was up to them to straighten it out."

On the night of August 12-13, 1992, Jack Boyes was scheduled to drive the shuttle to Johnstown. However, he did not do so, assertedly because he felt ill. Nor did he notify the Johnstown dispatcher that he would not be driving the shuttle on that night. Instead, after midnight, on August 13,

³⁴ I based my findings regarding Jack's conversation with Stan, on Jack's uncontradicted testimony.

³⁵ According to Jack, Lee also accused him of leaving the truck idling with its lights on and credit cards on the dashboard. I find it unlikely that Lee would accuse Jack of not being at the Richfield terminal and at the same time charge him with leaving a tractor idling, with credit cards on its dashboard, at the same terminal. I also find from Lee's credited testimony that he never accused Jack of allowing the tractor to idle on the night of March 18-19, 1992.

³⁶ According to Lee McQuaide's testimony, the only Richfield driver to whom he spoke about this incident was Dale Salsbury. According to Lee, Salsbury said he knew nothing about the coupling of the pups.

³⁷ I find from Stan McQuaide's testimony, corroborated by McQuaide's records, that Thomas was suspended for 1 day. I also find from Jack's testimony that he was suspended for 2 days.

³⁸ Lee McQuaide denied that he had given any instructions to have Tom pick up the tractor. Lee also testified that he did not know of any other source of such instructions. However, Tom seemed to be giving his best recollection of a conversation, in which Stan authorized him to ride in to Johnstown, on a McQuaide truck to retrieve the tractor which Jack had driven on March 27. Tom's account stands unchallenged by Stan. As Tom gave his recollection of the conversation in a frank manner, I have credited his testimony.

Barry Horner, upon noting that the shuttle had not arrived, tried unsuccessfully to contact Jack by telephone and radio. When he clocked out at 3:40 a.m., on August 13, Horner left a note of explanation for Stan McQuaide.³⁹

Tom drove the shuttle to Johnstown on the night of August 12–13. While there, he encountered Barry Horner, who remarked that “it looks like they are going to let Jack go.” Tom returned to Ohio, as a passenger in another McQuaide truck on August 13, 1992. He carried back paychecks for Jack and Salsbury, which he distributed to them. On returning to Ohio, Tom called Jack and told him, about his check and his discharge.⁴⁰

On August 14, 1992, Stan McQuaide told Tom that Jack had been terminated and that McQuaide would have to hire another driver for Richfield. Three days later, Stan told Dale Salsbury that Richfield could not operate with only two drivers. Stan went on to reveal that Jack had been terminated because he did not call in.⁴¹ In its answer to consolidated complaint, dated January 19, 1993, McQuaide admitted that it discharged Jack Boyes on about August 13, 1992.

At the time he told Tom of Jack’s discharge, Stan offered Tom the choice of a transfer to Johnstown or a layoff. Tom who lived at Ravenna, Ohio, concluded that it would have been “financially impossible” for him to accept employment at Johnstown. Tom chose the layoff.

On August 17, 1992, Stan told Dale Salsbury that the Richfield terminal could not operate with only two drivers. Salsbury differed with Stan, insisting that McQuaide had operated Richfield with only two drivers in the past. Stan laid Salsbury off.

In late September 1992, after a prehire interview, in which his attitude toward unions came up, McQuaide hired David McGuigan to drive the shuttle between Richfield and Johnstown. I have discussed this interview above. However, I find it necessary to set it out here in connection with the circumstances leading up to the alleged discrimination against McGuigan.

During the prehire interview, on September 24, 1992, President Lee McQuaide asked McGuigan if he knew Dale

Salsbury and Tom Boyes. When McGuigan said no, Lee asked if McGuigan was a union plant. McGuigan answered no. Lee asked McGuigan how he felt about unions. McGuigan disclosed that he had belonged to a union, but had a withdrawal card. Lee warned him that Tom Boyes and Dale Salsbury would not be around much longer because they were union supporters. Lee also said he wanted nothing to do with “their f—king unions in Youngstown or Ohio or . . . with anyone that is supporting any unions.”⁴²

After McGuigan’s arrival at its Richfield operation, McQuaide, in early October 1992, recalled Tom Boyes and Dale Salsbury. Until early February 1993, Tom Boyes and Dale Salsbury did pickups and deliveries out of Richfield and McGuigan drove the shuttle.

McGuigan became an active union supporter after he began working for McQuaide. He received about five authorization cards from Tom Boyes, which he distributed while driving out of the Johnstown terminal. On occasion, McGuigan wore a union hat at Richfield and at Johnstown.

In January 1993, McGuigan expressed pronoun sentiment in a discussion with employee John Pine, in the McQuaide lunchroom, at Johnstown. McGuigan complained that McQuaide was not treating the drivers right and suggested that they needed a union. At the same time, about 5 feet behind McGuigan was Ron Plumber whose father, Director of Maintenance John Plummer, was at all times material to these cases a supervisor.

On February 3, 1993, Dispatcher Barry Horner told Tom Boyes and Dale Salsbury that McQuaide was moving the Richfield operation to Columbiana, Ohio. Tom complained that Columbiana was a long way from his house. In fact, the distance was approximately 63 miles. Salsbury asked why they were moving. Horner answered that Lee decided to make the change because the trucks were being sabotaged at Richfield. Salsbury complained that the new location was over 100 miles from his home.

At the time Horner announced the move, Salsbury was driving a truck that had a hole in its radiator. According to Salsbury, a piece of welding rod, which dropped out of his radiator in Cleveland, caused the damage. He did not believe that the damage occurred at the Richfield yard. However, Lee told Salsbury that a screwdriver had caused the damage.

When McGuigan arrived at Johnstown, driving the shuttle, on February 3, 1993, he heard about the change in operations. Dispatcher Dusty Rhodes told him that Richfield terminal was closed, and instructed McGuigan to take his truck back to Columbiana. For McGuigan, the change meant an increase of 64 or 65 miles in distance between his residence in Cuyahoga Falls, Ohio, and his work station. McGuigan completed his run to Columbiana on February 3, and went home. On the following day, he telephoned Stanley McQuaide and complained that the new commuting distance was “entirely too far for [him] to travel back and forth to work, from Cuyahoga Falls to Columbiana.” McGuigan did not drive for McQuaide again until February 10.

The three Richfield drivers were each laid off for approximately 1 week. McGuigan’s layoff began on February 4, 1993. Tom and Salsbury drove tractors to Columbiana on that same day. Salsbury told Dispatcher Horner that he

³⁹ According to Jack Boyes’ testimony, on the night of August 12, 1992, he notified Horner that he would not be driving the shuttle because he was ill, and said he would explain his absence to Stan McQuaide. Jack also testified that he telephoned Stan later that evening and that, on hearing Jack’s explanation, Stan fired him for too many absences. Telephone records covering the evening of August 12, 1992, however, did not corroborate Jack’s testimony. Further, both Stan’s and Barry Horner’s testimony contradicted Jack’s in this regard. Finally, before the Pennsylvania Unemployment Compensation Board of Review, Jack testified, under oath, that on instruction from Horner he tried unsuccessfully to get in touch with Stan McQuaide on August 13 and that Thomas, his father, told him that he was fired. These contradictions, the telephone records, and my impression that Barry Horner was a frank witness, compelled me to credit him rather than Jack with respect to what happened on the night of August 12–13.

Tom’s credited testimony shows that he telephoned Jack on August 13, after learning of Jack’s discharge. However, Tom neither affirmed nor denied telling Jack about it. Nevertheless, I find from this testimony and Jack’s admission on cross-examination that Tom told him about the discharge.

⁴⁰ See fn. 39.

⁴¹ I based my findings regarding Barry Horner’s and Stan McQuaide’s remarks about Jack, on Thomas’ and Dale Salsbury’s testimony, respectively.

⁴² See fn. 17, where I have dealt with the conflict between McGuigan’s and Lee’s testimony regarding this interview.

would not drive 100 miles one way to work at Columbiana. Six days later, Salsbury returned to work, after Stan McQuaide told him that the Richfield drivers would be working out of Norton, Ohio.

On February 5, 1993, Lee McQuaide and Tom discussed the layoff of the three Richfield drivers. Lee blamed the move to Columbiana on the sabotaging of McQuaide's trucks at Richfield. Tom's truck did not suffer damage. However, he was aware of the leak in Dale Salsbury's truck radiator at Richfield. He also told Lee that the commuting distance between his home in Ravenna, Ohio, to Columbiana was too great. On the same date, Tom made a similar complaint to Dispatcher Horner. On February 9, 1993, Tom filed an unfair labor practice charge in Case 8-CA-25210, which later became Case 6-CA-24968-8 and was included in the instant proceedings. In his charge, Tom alleged that since on or about February 4, 1993, he, Salsbury, and McGuigan had been transferred to Columbiana, and thereby constructively discharged because of their union activity and membership. On the same day, Stan told Tom of the move to Norton. On February 10, Tom began driving out of Norton, Ohio, for McQuaide.

In the meantime, on February 8, 1993, Tom had applied for employment as a driver at Putnam & Storage Co. In his application, he told Putnam that McQuaide was his current employer, and that he was leaving his current employment because of the move to Columbiana. Tom worked for Putnam as a casual driver at its Richfield, Ohio facility, beginning on February 19, 1993. His timecards and testimony show Tom's casual employment at Putnam in February and March 1993.

On February 16, 1993, McGuigan reached Dispatcher Jack Instone and said he would drive the shuttle to Johnstown "one way or the other." When McGuigan left Norton at 6 or 6:30 p.m., the weather was snowy and the roads were difficult. McGuigan notified Dispatcher Dusty Rhodes, by radio, that the going was bad and that he would pull over until the salt trucks arrived. McGuigan's trip to Johnstown that night took about 9 hours, instead of the 4-1/2 hours he normally needed to make the run.

Once at McQuaide's Johnstown terminal, McGuigan exchanged pups and had maintenance attend to some defective lights on one of the pups. He left Johnstown at 5:20 a.m., on February 17. The weather and road conditions were wintry, with wind and ice impeding his progress. He pulled over to the side of the turnpike for about 20 minutes to allow plows and the salt truck to pass him. He arrived at Norton at about 10:30 or 10:40 a.m.

That same day, soon after arriving home, McGuigan received a phone call from President Lee McQuaide. Lee scolded McGuigan about returning late to Norton and for being the reason deliveries to Cleveland were late. McGuigan yelled back that McGuigan's support for the Union didn't allow Lee to call him and harass him.

At the time Lee called, McGuigan had worked for about 17 hours, and was very tired. Nevertheless, Lee asked McGuigan to get into his pickup truck, drive to Johnstown, and discuss "this whole situation" with Lee. McGuigan said he was "really tired" and noted that the trip would be almost 400 miles. He said he would try to get to Johnstown on the next day.

On February 18, McGuigan attempted to reach Johnstown in his pickup truck. As he reached Youngstown, his truck broke down. He arranged for towing back to his hometown, Cuyahoga Falls, Ohio. McGuigan phoned Lee and reported the breakdown.

Lee suggested that McGuigan rent a car to drive over to Johnstown. McGuigan rejected the suggestion as too costly. Instead, McGuigan offered to ride in that evening, with Salsbury, on the shuttle. Lee did not offer to pay for the car rental. Instead, Lee said he had an 11:30 p.m. appointment with an eye doctor, and refused to see McGuigan that evening.

In the same conversation, Lee warned that McGuigan would not receive any work if he did not come in and see Lee. McGuigan replied that that he had done the best he could to get to Johnstown, but could not do so. Lee ended the exchange, saying he expected to let McGuigan go.⁴³

By letter dated February 24, 1993, Lee McQuaide advised McGuigan as follows:

I spoke to you by telephone on 2/17/93, 2/18/93 and 2/19/93. In each of these conversations I told you that you had to come to Johnstown for a meeting concerning your job requirements and each time you agreed to come. During the last conversation you asked for permission to ride in with the shuttle truck and I said that you could. However, you still have not come in.

Since you have not reported or called, I can only assume you have quit. I am marking your records: Quit without notice.

On February 18, 1993, Tom drove McQuaide's city run all day. On that same day, Dispatcher Dusty Rhodes instructed Tom to go to Norton and assist a Johnstown driver. Tom went to Norton, where he opened the gate and helped a Johnstown driver to hook up two pups. That night, when McQuaide's dispatch asked him to drive the shuttle, Tom refused.

On the morning of the following day, Tom called Dispatcher Jack Instone and asked him if there was any work. Instone said he had nothing for Tom. Instone told Tom to call later and talk to the night dispatcher about work. When he heard from Instone that there was no work, Tom took a

⁴³ Lee McQuaide denied that he terminated McGuigan during their telephone conversation on February 18. Also, contrary to McGuigan, Lee testified about a conversation between them on February 19, in which McGuigan said he would come in with that night's shuttle. According to Lee, he said that McGuigan could come in with the Richfield shuttle, but that Lee could not see him until Saturday morning, February 20. However, there was no Richfield shuttle on February 18 or 19, because McQuaide had discontinued it in early February. I find it unlikely that McGuigan would have talked about the Richfield shuttle on February 18 or 19. This error together with Lee's casual attitude as he testified about conversations with McGuigan and whether he had any idea about McGuigan's union sentiment at the time of these conversations caused me to doubt the reliability of Lee's testimony regarding these matters of fact. His casual air contrasted sharply with his expressions of hostility toward the Teamsters and his demonstrated intention to prevent the Union from organizing his employees. Accordingly, I have not credited Lee's testimony either regarding a conversation on February 19, or where such testimony was inconsistent with McGuigan's in these regards. Of the two, McGuigan seemed to be more concerned about providing his best recollection.

driving assignment at Putnam.⁴⁴ Tom did not call McQuaide after February 19, 1993.⁴⁵ I also find from Tom's testimony that he did not receive any communication from McQuaide after that date.

Tom has not worked for McQuaide since February 18. Nor has McQuaide offered him any work since that date. On or about February 25, 1993, Tom received a letter from McQuaide, signed by Stan McQuaide, which announced that Tom had quit without notice. The letter, dated February 24, read as follows:

You were scheduled to report for work at 5 p.m. on Monday 2/22/93. You did not report as scheduled. You did not report off as required. Barry Horner called your home at 7:45 p.m. 2/22/93 and left a message with your wife to have you return his call.

Since you have not called, I am mailing your records: Quit without notice.⁴⁶

McQuaide's records included a "Notice of Employment Change" showing that Tom resigned. In its comments section, the form reported that he "quit without notice." The form was dated March 2, 1993. Stan McQuaide's secretary wrote Stan's initials on the bottom of the form.

Dale Salsbury last reported for work at McQuaide's Norton facility at 7 a.m. on February 19, 1993. The weather was very cold and Salsbury's truck would not start. He telephoned McQuaide Director of Maintenance John Plumber at Johnstown and explained the situation. Plumber told Salsbury to go home. That night, Salsbury was scheduled to run the shuttle to Johnstown. During the afternoon, Salsbury did not feel well. He called Johnstown and told Stan McQuaide that he could not run the shuttle because he did not feel well. Stan said okay.

On the evening of the following day, Salsbury telephoned Johnstown and asked Dispatcher Dusty Rhodes what was going on. Rhodes replied that Johnstown was not sending any freight out to Norton. Neither Rhodes nor any other McQuaide employee or supervisor instructed Salsbury to call in on Monday, February 22, 1993, to Dispatcher Jack Instone. From his conversation with Rhodes, Salsbury con-

cluded that McQuaide was shutting down its operations at Norton.

Salsbury was out of town from February 23 until February 27, 1993, visiting his daughter, near Chicago. When he returned to Ohio, he found a notice that there was a certified letter for him at the post office. In conversation with Tom, Salsbury learned of the letter dated February 24, 1993, which Tom had received from McQuaide. Salsbury concluded that his letter was similar to Tom's, and did not bother to pick it up.⁴⁷

McQuaide's records show that Tom and Salsbury were scheduled to work on February 22. With McGuigan's termination, only Tom and Salsbury were left to do pickup and delivery, and the shuttle. Tom was scheduled to do the pickup and delivery, and Salsbury was listed for the shuttle. Neither Tom nor Salsbury contacted McQuaide on February 22.

I find from Stan McQuaide's testimony that on the morning of February 23, 1993, he told Dispatcher Jack Instone: "Let's make sure we make an attempt to get a hold of [Tom and Salsbury], so they can't say we didn't try to call them."

Following Stan's instructions, Instone telephoned Tom's home. When an unidentified "female" answered, Instone asked for Tom. Tom was not home. Instone left a message asking Tom to return Instone's call at McQuaide. The unidentified "female" said that Tom would not be home "until real late." Instone said "just have him give us a call." Tom never returned Instone's call.

Also, on February 23, 1993, Instone tried unsuccessfully to reach Salsbury. Instone left a message on Salsbury's answering machine. Instone's recorded message asked Salsbury to give McQuaide a call as soon as he could. Salsbury did not return Instone's call. McQuaide has not made any further efforts to employ Salsbury.

b. Analyses and conclusions

The General Counsel contends that McQuaide violated Section 8 (a)(3) and (1) of the Act by:

1. Issuing a warning to Jack Boyes on January 14, 1992.
2. Suspending Jack Boyes and Tom Boyes for 3 days on January 16, 1992.
3. Suspending Tom Boyes for 2 days on March 5, 1992.
4. Suspending Jack Boyes and Tom Boyes for 2 days on March 19, 1992.
5. Refusing to assign work to Tom Boyes on March 31, and April 2, 1992.
6. Denying wages to Jack Boyes for 5-1/2 hours, on March 28, 1992.
7. Denying wages to Tom Boyes for 5-1/2 hours, on April 3, 1992.
8. Terminating Jack Boyes on August 13, 1992.
9. Offering Dale Salsbury and Tom Boyes transfers to Johnstown, Pennsylvania, on or about August 17, 1992, and laying them off from that date until October 1992.

⁴⁴ I based my findings regarding Thomas' call on February 19 on his testimony at the hearing in these cases, on July 12, 1993, when he conceded that he had made only one call to McQuaide on February 19.

⁴⁵ On direct examination, Thomas testified that he called Dusty Rhodes at about 1 a.m. and Dispatcher Instone, later on the same morning and again later in the day. On further examination by McQuaide's counsel, however, Thomas conceded that he called Johnstown dispatch only once on February 19, at about 6 a.m. On cross-examination, Thomas also testified that he called Instone on Monday, February 22, and learned that there would not be any freight coming out to Norton. On further examination by McQuaide's counsel, later in the trial, Thomas conceded that he might not have made such a call from his home or from any place else. Accordingly, I have not credited Thomas' initial assertion regarding a call to Instone on February 22.

⁴⁶ I find from Jack Instone's testimony that he made one call to Thomas' home on February 23, 1993. Absent from Barry Horner's testimony is any assertion that he made a call to Thomas' home on February 22 or 23. Thus, Stan McQuaide's letter erred as to which dispatcher called Thomas' home and as to when the dispatcher made the call.

⁴⁷ I based my findings regarding Salsbury's conduct and conversations from February 18 on his testimony. Salsbury seemed to be giving his best recollection in an objective manner, on both direct and cross-examination.

10. Laying off Dale Salsbury, Tom Boyes, and David McGuigan from February 4 until February 10, 1993.

11. Terminating Dale Salsbury, Tom Boyes, and David McGuigan in February 1993.

McQuaide disputes the General Counsel's contentions. According to McQuaide, it imposed the listed adverse actions on the employees because of faulty performance, violations of its rules, or other reasons unrelated to union activity or prounion sentiment. In short, McQuaide, in each instance, urges me to find that it would have taken the adverse action even if the employee had not supported the Union. There is ample evidence to support an inference that Tom and Jack Boyes', Dale Salsbury's, and David McGuigan's union activity was a motivating factor in McQuaide's decisions to impose the above-listed adverse actions on them.

In his testimony before me, Lee McQuaide expressed strong animosity toward the Union's parent, the International Brotherhood of Teamsters. He asserted that as far as he knew, "all their history has been nothing but violence. Their history is notorious for it. They shouldn't even be allowed to represent anybody."

Lee's strong dislike of the Teamsters translated into his stated desire to maintain McQuaide's nonunion status. During a prehire driving test, in March 1991, Lee told Tom that McQuaide was not "a union outfit" and warned that he would never employ a union driver behind the wheel of his truck. A few weeks prior to the Board-held election of June 27, 1972, Lee told Dale Salsbury that the Union was no good, that it would not work, and that it would be harmful for McQuaide.

Despite Lee's warning, Tom, along with Tom's son, Jack Boyes, and Dale Salsbury began distributing Local 24's authorization cards among McQuaide's employees in September 1991. On September 11, Tom signed a union card, which he handed over to Local 24, along with Salsbury's signed cards. One month later, Jack signed a card for Local 24. Tom and Jack openly sought signatures on behalf of Local 24 at McQuaide's Ohio and Pennsylvania facilities. By November 14, 1991, Tom and Jack had about 129 signed cards. Tom and Jack held a meeting with McQuaide's Bethel drivers, where they distributed cards for Local 24 and obtained signatures.

The three employees openly showed support for Local 24. Tom and Jack wore headgear with Local 24's name on it. Salsbury wore a Teamsters hat and a pin, which said "Stop Scabs." Salsbury used his truck's radio to discuss the Union with other drivers. His remarks were occasionally audible at McQuaide's Johnstown headquarters.

Beginning in December 1991, Tom, Jack, and Salsbury supported Local 429's organizing drive. They signed cards for Local 429. Tom handed out Local 429's cards to fellow McQuaide employees. He received their signed cards, which he turned over to Local 429. Jack passed out between 70 and 100 Local 429 cards. Employees sent their signed union cards to him for return to Local 429. Salsbury distributed Local 429's cards to McQuaide's Pennsylvania drivers, when he found them in the vicinity Cleveland.

McQuaide's management quickly learned of the union activity among its employees and gave vent to its animosity toward the Ohio-based union activists. In September 1991, Jack joined with John Pine in urging the merit of having a

union at McQuaide, in a discussion with Dock Foreman Locker. Jack also told Locker that the employees were organizing the Union. Locker warned that if they were thinking about having a union McQuaide would fire them. Locker also warned that even if a union succeeded in organizing its employees, McQuaide would shut down and reopen non-union. As found above, Locker's warnings violated Section 8(a)(1) of the Act. When Jack and John Pine persisted in distributing cards openly at Johnstown, Foreman Baker and Kostyk banished them from its loading dock.

Lee McQuaide was alert to identify the union activists among McQuaide's employees. On January 20, 1992, he told a McQuaide sales representative that he considered Tom and Salsbury to be "the union instigators." In April or May of the same year, Lee told Tom that the Ohio drivers were "nothing but union trouble," and that "you are all organizers over there and cause nothing but union trouble."

During David McGuigan's prehire interview in September 1992, Lee expressed hostility toward unions and employees who supported them. Lee asked McGuigan if he was a union plant. McGuigan answered no. Continuing, Lee asked McGuigan about his sentiment toward unions. When McGuigan said he had belonged to a union, Lee warned that Tom Boyes and Dale Salsbury would not be around much longer because they were union supporters. Finally, Lee added that he wanted nothing to do with "their f—king unions in Youngstown or Ohio . . . with anyone that is supporting any unions."

I have considered Lee's prehire questioning of McGuigan above, and have found it violative of Section 8(a)(1) of the Act. I note here that Lee's questions regarding the possibility that McGuigan was a union plant, and McGuigan's union sentiment were mingled with thinly veiled warnings that he would soon rid McQuaide of Tom Boyes and Dale Salsbury because of their union activity and that any employee associated with a union would suffer a similar fate. I have found above, that these warnings interfered with, restrained, and coerced McGuigan in the exercise of his right to assist the Union, and thereby violated Section 8(a)(1) of the Act. I also find that Lee's warnings provided strong support for the General Counsel's prima facie showing that the four employees' support for the Union was a motivating factor in McQuaide's imposition of the adverse actions listed above on Tom, Jack, Dale, and David.

Despite Lee's coercive questioning and warnings, McGuigan became an active Local 429 supporter, soon after he joined Tom and Salsbury as a McQuaide driver at its Richfield terminal. McGuigan handed out five authorization cards, which he had received from Tom. While visiting McQuaide's Johnstown, he occasionally displayed a union hat, which he also wore at times at the Richfield terminal.

In January 1993, McGuigan expressed prounion sentiments to fellow employee John Pine, while the two were in McQuaide's lunchroom at Johnstown. As McGuigan complained that McQuaide was mistreating its drivers and expressed prounion sentiment, Ron Plummer, whose father, John, is a supervisor, was seated a few feet away.

Lee's and Stan's concern about keeping McQuaide free of a union was no secret. His warnings to McGuigan regarding Tom and Salsbury show that Lee was well informed about their union activity. Lee's subordinates in McQuaide's management were also quick to warn employees that they would

suffer discharge if they supported the Union. Thus, the record strongly suggests that McQuaide's management was alert to any manifestation of prounion sentiment among their employees. Here, I find McGuigan suffering a layoff and 2 weeks later a discharge, after he had evidenced prounion sentiment by wearing a union hat, handing out authorization cards, and expressing it within earshot of Supervisor Plummer's son.

Also significant in assessing the evidence of motivation was Lee's remarks in 1992, showing that he regarded the Ohio drivers as a hotbed of union support. From these circumstances, I find that by the end of January 1993, Lee at least suspected that David McGuigan had joined Tom and Salsbury as a union activist.

McQuaide's willingness to resort to adverse action against prounion employees, as expressed by Lee's warnings to McGuigan, and shown by its unlawful treatment of Pine and Marshall, provides strong support for the General Counsel's prima facie showing that McGuigan's layoff on February 4, 1993, and his termination 2 weeks later were motivated by hostility to union activity. Further support for that showing arises from the concurrence of McGuigan's termination with those of Tom Boyes and Dale Salsbury. For in September 1992, Lee had warned McGuigan of Tom's and Dale's impending terminations in reprisal for their union activity. In sum, I find that the record strongly suggests that Lee McQuaide targeted Tom Boyes, Jack Boyes, Dale Salsbury, and David McGuigan as union supporters and that he was likely to use adverse personnel actions against them in response.

McQuaide argues that its motive in issuing a written warning to Jack Boyes on January 14, 1992, was to discipline him for idling his tractor on the previous night. Jack conceded at the hearing that he idled his truck for 45 minutes. As found above, however, from 1988 until March 1992 McQuaide did not enforce its no-idling rule consistently. Indeed, on the night Jack was idling his tractor, he noticed another truck idling. He cautioned Tim, the driver of that truck, that he would get into trouble for idling. Tim replied that he always idled. Tim consulted Dispatcher Barry Horner, who allowed him to idle. The record did not disclose how long Tim idled his truck that night. As the record shows that McQuaide's enforcement of its no-idling rule was inconsistent, I find that the written warning issued to Jack Boyes on January 14, 1992, was disparate treatment. *Pepsi Cola Bottling Co.*, 301 NLRB 1008, 1050 (1991).

In light of the General Counsel's strong prima facie showing, as set forth above, I find that idling was a pretext. Instead, I find that Jack's union activity motivated McQuaide's decision to issue the written warning notice to him on January 14, 1992. Accordingly, I find that by inflicting that discipline on Jack Boyes, McQuaide violated Section 8(a)(3) and (1) of the Act.

On January 16, 1992, Stan and Lee decided to give Tom and Jack Boyes time off. I find from McQuaide's records and Stan's testimony that he and Lee suspended Tom and Jack for 3 days, January 17, 20, and 21. According to Stan, the reason for these suspensions was that they did not meet their obligation to cover the shuttle and that "the real problem was that they led us to believe that they were covering it, and only after it was too late did we finally figure out that they weren't going to be able to do what they said they'd

do, or they weren't doing what they said they would do." I find that Stan's explanation is pretextual.

The first infirmity in Stan McQuaide's explanation is his assertion that Tom and Jack failed to "meet their obligation to cover the shuttle." For, on cross-examination, Stan admitted that when a driver calls off it is the dispatcher's responsibility to cover the route with another driver. Further, McQuaide did not show that its management ever apprised Tom or Jack that their responsibilities included making certain that the shuttle was covered when one of them called off. On January 15, 1992, when Jack called off because of his wife's labor pains, the dispatcher neglected his duty and left it to Jack to cover the shuttle. Jack had not guaranteed that he would get Tom to cover the shuttle. Rather, Jack had told Dispatcher Barry Horner that he would try to reach Tom and ask him to drive the shuttle in, but that he could not "speak for him." Thus, Jack had not obligated himself to do more than try. There was no showing that Horner insisted that Jack either cover the shuttle if he could not reach Tom or get Tom's agreement to cover it.

The second defect in Stan's explanation is that on the night of January 15-16, 1992, McQuaide did not afford Tom an opportunity to obligate himself to drive the shuttle. Dispatcher Horner's testimony shows that he never talked to Tom that night. There was no evidence that on that night any of McQuaide's dispatchers or other supervisors received any undertaking by Tom to drive the shuttle. Thus, on two counts, Stan's complaint that Jack and Tom "led us to believe that they were covering" does not withstand scrutiny.

In sum, I find that McQuaide has failed to rebut the General Counsel's prima facie showing that union activity motivated Stan and Lee when they suspended Tom and Jack for 3 days on January 16, 1992. I further find, therefore that by these suspensions McQuaide violated Section 8(a)(3) and (1) of the Act.

I find merit in McQuaide's claim that it suspended Tom for the day, on February 27, 1992, for failing to submit a timely accident report covering his loss of cargo on February 5, 1992. In this instance, McQuaide Cargo Claims Manager Joseph Sepety requested a written report from Tom. Sepety testified that he asked Tom to submit the report as soon as possible. According to Tom, Sepety asked that the report be submitted by February 17. Whichever testimony is credited is immaterial. For Tom did not turn the report in until February 27, 10 days late, even if I credit his testimony.

Sepety's uncontradicted and credited testimony showed that he had legitimate business reasons for asking Tom to provide a report in timely fashion. Sepety and Instone made a reasonable effort to obtain the report from Tom. I also find that Lee showed forbearance before he imposed punishment on Tom for neglecting to submit the report. For his part, Tom waited until the withholding of work to comply with Sepety's request.

I find that with respect to Tom's loss of work on February 27, 1992, McQuaide has rebutted the General Counsel's prima facie showing. Accordingly, I shall recommend dismissal of the allegation that McQuaide's withholding of work from Tom Boyes on February 27, 1992, violated Section 8(a)(3) and (1) of the Act.

Lee McQuaide testified that he and Stan decided to suspend Tom and Jack rather than discharge them for their misconduct on the night of March 18, because the two employ-

ees were involved with the Union. Lee and Stan had received information, which led them to believe that on March 18 Tom had left a tractor idling all night at the Richfield terminal, with the cab door open, and Ohio and Pennsylvania turnpike credit cards sitting open on the console. They also had concluded from this report that Jack had not gone to the Richfield terminal and attempted to drive to Johnstown.

Tom's testimony showed that he could not recollect what he had done about the tractor on the evening of March 18, 1992. However, he conceded that he had left the tractor idling for Jack on occasion. There was no showing that he attempted to convince Stan and Lee of his innocence.

I find that Stan and Lee had ample ground for concluding that Jack had not been at the Richfield terminal on the night of March 18. Granted, Jack had telephoned the dispatcher and reported bad road conditions and that the tractor was stuck. Yet, Stan's testimony showed that on the following day he received a report from an eyewitness that the tractor was idling and apparently had been sitting at the Richfield terminal all night with its engine running, its cab door open, and credit cards lying on its console on that occasion. Stan reasonably assumed that had Jack been at the Richfield terminal on the evening of March 18 and decided against driving the shuttle he would have shut down the tractor's engine and secured the cab door. In light of the unchallenged report of the idling tractor, Jack's account of his effort to move it and the road conditions near the Richfield terminal did not ring true.

I cannot find that union activity was a motivating factor in McQuaide's decision on March 19, 1992, to punish Jack and Tom. The two employees engaged in misconduct on the previous evening, which was serious enough to warrant disciplinary action. There was no showing that McQuaide had shown indifference to such misconduct by other employees who were not known or suspected union supporters. Nor does it appear that either the 1-day suspension imposed on Tom or the 2-day suspension given to Jack were excessive. I shall, therefore, recommend dismissal of the allegations that these two suspensions violated Section 8(a)(3) and (1) of the Act.

McQuaide's explanation of its motive for withholding pay from Jack on March 28, 1992, was pretextual. McQuaide insists that Jack Boyes was not on companytime when he rode back to Ohio with John Pine on March 28. According to McQuaide, Jack had not obtained his CDL by that date and thus, under its rule, could not drive its trucks. However, McQuaide has not shown any written or unwritten company rule expressing the policy it now urges before me. Nor has McQuaide shown that it warned Jack or any other employee that they would lose wages if they were on the road on March 28 without a CDL.

Jack was at work when the deadline became effective. He went to Johnstown on McQuaide's orders and was under McQuaide's orders when he rode back with Pine. Also, McQuaide had the option of waiving its rule without running afoul of the April 1 deadline imposed by Federal law. Even without the exercise of that option, I find that Jack was in McQuaide's employ during his return trip to Ohio and thus entitled to pay for 5-1/2 hours, under McQuaide's zone pay scale.

McQuaide has failed to rebut the General Counsel's showing that Jack's union activity was a factor in McQuaide's de-

cision to withhold 5-1/2 hours' pay from Jack because he rode back to Ohio on March 28, 1992. I find, therefore, that by withholding that pay McQuaide violated Section 8(a)(3) and (1) of the Act.

McQuaide places the blame for Tom's loss of work on March 31 and April 2, 1992, on Jack's neglect to obtain a CDL prior to its deadline. According to this explanation, Jack left the tractor at Johnstown on March 28, when he drove back to Ohio with John Pine. Thus, McQuaide suggests that it had no way to return that tractor and attached trailers to Richfield.

McQuaide's effort to escape responsibility for Tom's loss of 2 days' wages falls short of the mark on two grounds. First, I note that McQuaide sent Jack to Johnstown, knowing that he had no chance of meeting its March 28 deadline. McQuaide also knew that Tom had his CDL and could have made the round trip. These circumstances suggest that McQuaide engineered the situation to provide an excuse for depriving two union supporters of wages.⁴⁸ I find that by depriving Tom of 2 days' wages on March 31 and April 2, 1992, McQuaide violated Section 8(a)(3) and (1) of the Act.

A discriminatory motive is also suggested by McQuaide's treatment of the interruption of Richfield's operations resulting from the presence of Jack's tractor at Johnstown on and after March 28, 1992. Earlier on March, 19, 1992, when the Richfield drivers were not available to drive the shuttle to Johnstown, Stan did not hesitate to dispatch Johnstown drivers to Ohio to cover their work. He sent Johnstown drivers to pick up and deliver in Ohio, and to drive the shuttle from Richfield to Johnstown. On March 28, Stan took no action. He sent no drivers to cover the Richfield operations. Nor did McQuaide take any action before April 3, 1992.

According to Lee, McQuaide did not pay Tom for his trip to Johnstown on April 3, 1992, because the Richfield drivers had "goofed [the shuttle] up and it was up to them to straighten it out." This excuse does not help McQuaide's defense. McQuaide has not shown in this record that Tom had anything to do with the discontinuance of the shuttle and the breakdown of the Richfield operation between March 27 and April 3, 1992. Tom had his CDL. Further, McQuaide, not Tom, engineered that breakdown and maintained it in reprisal for his and son Jack's union activity.

Nor is there any merit to McQuaide's suggestion, in its brief, that Tom's trip to Johnstown on April 3, 1992, was "of his own volition." When Stan authorized Tom to ride to Johnstown on a McQuaide truck to pick up the tractor Jack had driven on March 27, Stan, on McQuaide's behalf, was dispatching Tom. When Tom complied with that authorization, he was working for McQuaide as one of its regularly employed drivers and was entitled to be paid for the trip.

In sum, I find that McQuaide was motivated by Tom's union activity when it decided not to pay the 5-1/2 hours'

⁴⁸ On direct examination at the hearing, Stan insisted that the CDL requirement, rather than Jack's or Tom's union activity, was the cause of Tom's loss of 2 days' pay. However, I have found that it was McQuaide's design which caused Tom's loss of 2 days of work. McQuaide dispatched Jack when Stan knew that he had not obtained a CDL. I also find from the General Counsel's *prima facie* showing that Stan shared Lee's hostility toward the Richfield drivers because they supported the Union. In light of these circumstances, I did not credit either Stan's denial or his assertion that Jack's lacking a CDL was the cause of Tom's loss of 2 days' wages.

wages to which he was entitled by his trip to Johnstown. Accordingly, I further find that by failing to pay those wages to Tom, McQuaide violated Section 8(a)(3) and (1) of the Act.

According to Stan's testimony and McQuaide's brief, after hearing nothing from Jack for 10 days, they assumed that he had abandoned his job and considered him to have quit. The notion that Jack quit, however, did not square with McQuaide's answer to the consolidated complaint dated January 8, 1993. There, McQuaide admits that it discharged Jack about August 13, 1992. Stan's testimony and McQuaide's brief also conflict with Dispatcher Horner's remarks to Tom on August 13, 1992, and with Stan's assertions to Tom and Dale Salsbury during the next few days that McQuaide had let Jack go.

The substantial change in McQuaide's description of the termination of Jack's employment suggests that Stan and Lee wanted to avoid having to explain the discharge of a leading union activist, only a few weeks after the Board-held election among its employees. If Jack had quit, McQuaide would not be required to provide an excuse that might prove inadequate in an NLRB proceeding. Thus, I find this shift fosters the suspicion that McQuaide first seized on Jack's failure to phone the dispatcher on the night of August 12-13, 1992, as a pretext for getting rid of a union activist. Then, on further review of the situation, Stan and Lee decided to camouflage Jack's termination by trying to show that he quit. I find, however, that McQuaide discharged Jack on August 13, 1992.

From the foregoing, I find that McQuaide discharged Jack Boyes on August 13, 1992, in retaliation for his active role in the Union's organizing drive among its employees. I also find, that by discharging Jack, McQuaide violated Section 8(a)(3) and (1) of the Act.

According to McQuaide, it laid Tom Boyes and Dale Salsbury off on August 17, 1992, because it could not operate the Richfield terminal with only the two drivers remaining there after Jack quit. Contrary to McQuaide's position, however, it was Jack's unlawful discharge which diminished the Richfield crew by one. Thus, I find no merit in McQuaide's excuse. Instead, I find that McQuaide laid Tom and Dale off as part of an effort to encourage them to quit.

A further ground for my rejection of McQuaide's excuse is its failure to substantiate its asserted inability to operate Richfield after Jack's departure. There was no showing that McQuaide lacked the resources to sustain the Richfield operation. On the contrary, Stan's testimony showed that he easily found Johnstown drivers to drive the shuttle and cover the Cleveland area pickups and deliveries in March 1992, when Jack did not drive the shuttle. I also note from Tom's credited testimony that a Johnstown driver, operating in Cleveland, picked Tom up on the way back to Johnstown. Thus, the record suggests that McQuaide could have operated the Richfield terminal by assigning a Johnstown driver to the shuttle.

Contrary to the General Counsel's contention, I do not find that Stan attempted to transfer Tom or Dale to Johnstown, before laying them off on August 17, 1992. Instead, I find that he asked them if they were interested in moving their work station from Richfield to Johnstown, about 5 hours driving from their respective homes. He posed this question with no reasonable expectation that either employee

would make the move. Stan used this question as a ploy to mask McQuaide's unlawful effort to get rid of two more union supporters.

In sum, I find that McQuaide laid Tom Boyes and Dale Salsbury off on August 17, 1992, in reprisal for their union activity. I further find that by that conduct, McQuaide violated Section 8(a)(3) and (1) of the Act.

However, I do not find an attempt to transfer them to Johnstown. Accordingly, I shall recommend dismissal of the allegation that McQuaide made an unlawful attempt to transfer Tom and Dale to Johnstown.

McQuaide contends that apparent sabotage of two tractors and insufficient security against its recurrence, not union animus, caused it to close its Richfield terminal on February 4, 1993, and move its activity to Columbiana. McQuaide concedes that the distance between Richfield and Columbiana was too great to permit Tom Boyes, Dale Salsbury, or David McGuigan to commute between their respective homes and Columbiana. However, McQuaide points out that it made a reasonable effort to find, and did find, a convenient location to accommodate the three employees.

I find that McQuaide has adequately substantiated its contention. On or about January 5, 1993, a shop foreman's report and Lee's inspection showed that contrary to Salsbury's opinion, his tractor suffered radiator damage due to sabotage. Salsbury had reported that a segment of welding rod had caused the damage.

Lee and the shop foreman found two punctures of the radiator core, one puncture of the radiator's screen and scratches on the radiator's shutters, which prevent leakage of the radiator's heat. Lee and the foreman concluded that a hand-held screwdriver had caused the damage.

According to Stan, the cost of repairing a tractor's radiator core "can run well over a thousand dollars." In addition, Stan testified, without contradiction, that the costs of towing Salsbury's tractor from Richfield to Johnstown for inspection and the repair of the radiator added up to thousands of dollars of expense. I also find from Stan's and Lee's testimony that they agreed that if another incident of sabotage occurred at Richfield they "would have to take some drastic steps to stop it."

Lee's undisputed testimony shows that a few weeks later a second radiator puncture occurred at Richfield. The Johnstown garage reported to Lee and Stan that it was sabotage again. On further consideration, Stan and Lee concluded that they could not afford to keep equipment at Richfield, that the security there was "not good enough." They decided that their Columbiana terminal was "a quick fix." There was no showing that McQuaide had any other available facility to accommodate the Richfield operation and the three drivers.

When Tom Boyes, Dale Salsbury, and David McGuigan refused to work out of Columbiana because it was too far for commuting, McQuaide did not jump at this opportunity to get rid of the three union supporters. Instead, I find, from Stan's unchallenged testimony, that McQuaide installed them at a location in Norton, Ohio, only 15 or 20 miles from Richfield. McQuaide made no secret of this new location. Dispatcher Jack Instone called McGuigan and asked him to work out of Norton. About 1 week after the Columbiana move, Stan told Salsbury and Tom about Norton and invited them to work there. It is undisputed that on or about Feb-

ruary 10, 1993, the three drivers began operating out of Norton, Ohio.

I find that McQuaide has shown that its explanation for the brief layoff of the three Richfield drivers in early February 1993 was not pretextual. Lee and Stan did not seize on one isolated incident as an excuse for shutting their Richfield terminal. Within a brief period, there were two incidents which caused Stan and Lee to fear reasonably for the safety of their equipment at Richfield. The attempt to move the three drivers to Columbiana raised some suspicion that Stan and Lee were trying to get rid of them. The second choice, however, Norton, came quickly after the three employees had registered their refusals to commute so far. This circumstance dissolved that suspicion. In sum, McQuaide's explanation overcame the General Counsel's prima facie showing that antiunion sentiment was a motivating factor in this brief layoff. Accordingly, I shall recommend dismissal of the allegation that this layoff violated the Act.

I find no merit in McQuaide's contention that McGuigan quit. This contention rests on Lee's self-serving letter of February 24, 1993, to McGuigan and Lee's rejected testimony. I find from McGuigan's testimony that Lee fired him on February 18, 1993, at the end of their last telephone conversation.

Lee's effort to explain why he wanted to have a meeting with McGuigan added to my suspicion that Lee was worried about having to explain the discharge of another union supporter. Lee's testimony painted a dismal picture of David McGuigan's performance. According to Lee, McGuigan was getting the twin trailers to Richfield late every day. Further, Lee charged that McGuigan had constant problems with the garage, was forever sleeping on the job, didn't check loads, had spills, ran low on oil and water, and on an unspecified number of weekends did not plug his tractor in to keep it warm so that it would start on Monday morning. Lee testified that McGuigan's failure to plug in his tractor resulted in a cost ranging from \$150 to \$200, on each occasion. Lee testified that McGuigan's "work performance deteriorated to the point that there wasn't anything at all that he did right." Yet, with all these asserted shortcomings, McQuaide showed only one verbal warning issued to McGuigan in early February 1993, and a written warning 2 weeks later for not plugging his tractor in to keep it warm. Both warnings came from Director of Maintenance John Plummer. Aside from Plummer's warnings, McQuaide did not show any other discipline imposed on McGuigan prior to February 18, 1993, for misdeeds or neglect in his performance. Nor did McQuaide provide any particulars beyond Plummer's testimony and his warnings.

More important, Lee did not explain why, with all these asserted faults impairing his value as an employee, McQuaide concerned itself with McGuigan's convenience in its decision to move its former Richfield operations to Norton and then invited him to return to work as late as February 10. After all, by that date the claimed deterioration in McGuigan's performance would have become evident. Lee has not shown that he or Stan was hesitant about recalling McGuigan from layoff on or about February 10. These circumstances suggest that at first Lee seized on McGuigan's late arrival at Johnstown and his late return to Norton on the night of February 16 as an opportunity to discharge McGuigan. After some reflection, Lee sought to bolster his

excuse by coming up with a list of McGuigan's shortcomings which now became important.

McGuigan's difficulty in coming to Johnstown on February 18 gave Lee a more immediate pretext for firing McGuigan. It will be recalled, however, that Lee and Stan had suspended Tom and Jack Boyes on March 19, 1992, instead of discharging them because they were union activists. On February 18, 1993, Lee at least suspected that McGuigan was a union activist when he fired him. Six days later, after further reflection on McGuigan's discharge, Lee prepared a self-serving letter, which told McGuigan, and anyone else who might read it, that David McGuigan had quit. Thus, did Lee attempt to avoid a finding that his reason for discharging McGuigan was pretextual. For if McGuigan had voluntarily quit, McQuaide would have nothing to explain.

In sum, I do not credit Lee's explanation of McGuigan's termination. The circumstances recited above and his offhand manner, as he testified about his dealings with, and complaints against, McGuigan, suggested that Lee was using his ingenuity to come up with an explanation to defeat the General Counsel's case. Accordingly, I find that the General Counsel has shown by more than a preponderance of the record evidence that McQuaide discharge David McGuigan on February 18, 1993, because of his suspected activity on the Union's behalf. I further find that by discharging McGuigan, McQuaide violated Section 8(a)(3) and (1) of the Act.

Also without merit is McQuaide's claim that Tom Boyes and Dale Salsbury quit its employ on or about February 19, 1993. Stan McQuaide's testimony shows that he intended to "make an attempt to get a hold of [Tom and Salsbury] so they can't say we didn't try to call them." Dispatcher Instone made one call to each of those employees. As luck would have it, he did not reach either of them. Instone spoke to a woman at Tom's home and to an answering machine at Salsbury's. Instone made no further calls to either Tom or Salsbury. Nor did anyone else from McQuaide try to get in touch with Tom or Salsbury. Stan's instructions suggest that he was hopeful that the discontinuance of the flow of freight to Norton had encouraged the two surviving union activists to quit. This was the desired result envisioned by Lee on September 24, 1992, when he told McGuigan that Tom Boyes and Dale Salsbury would not be around much longer because of their support for the Union.

Stan's perfunctory effort to contact Tom and Dale contrasts sharply with McQuaide's earlier efforts to contact Tom and Jack. Thus, in January 1992, when Barry Horner was unable to reach the shuttle, he called Jack Boyes home three or four times before placing a call to Tom's home. When Horner found that Tom was not home, he called Salsbury.

Again, in August 1992, Dispatcher Horner made two or three fruitless calls to Jack's home to locate him. Then, Horner called Tom to try to locate Jack. Tom could not help Horner. According to Horner's testimony, he "probably tried to call Jack one more time with no answer at his residence."

I also note that when Instone left messages in February 1993 he did not suggest that if Tom Boyes and Dale Salsbury failed to respond by a designated date McQuaide would conclude that they were quitting. In sum, I find that after telling Tom there was no work, and telling Salsbury that Johnstown was not sending any freight to Norton, Stan McQuaide made a pretense of contacting them. He gave each

of the two employees one call on February 23. The next day, he sent a letter to each saying that the addressee had quit without notice. I find, however, that Stan had constructively discharged Tom Boyes and Dale Salisbury, respectively, on February 19 and 20, 1993, when McQuaide withheld work from them. I further find that Stan resorted to these tactics in an effort to conceal his antiunion motive in ridding McQuaide of two employees, who had assisted the Union's organizing campaign among its employees. By this conduct, I find that McQuaide violated Section 8(a)(3) and (1) of the Act.

4. Barry Michalides

a. *The facts*

In August 1989, Barry Michalides began working as a dockman at McQuaide's Johnstown, Pennsylvania terminal. He loaded and unloaded freight, counted it, and occasionally drove a forklift. His immediate supervisors during his employment were Dock Foremen Bill Robertson, Tony Kostyk, Vallie Baker, and Ron Locker. McQuaide terminated Michalides on November 15, 1991.⁴⁹

Employees John Pine and Jack Boyes made Michalides aware of Local 24's organizing campaign in September. Pine and Boyes told Michalides about the organizing in Ohio and asked him to sound out McQuaide's Johnstown employees about supporting Local 24. Michalides found a good response when he spoke to fellow employees about having a union.

From September to November, Michalides obtained union literature from Pine and distributed it to interested employees. He passed out various quantities of four different pronoun pamphlets to McQuaide employees on the loading dock and in the terminal's lunchroom.

In mid-September, Michalides began receiving and distributing union authorization cards for Local 24. He gave a quantity to employee Joseph Patula. From September to early November, Michalides handed out 15 or 20 union cards at McQuaide's Johnstown terminal, in its lunchroom and on its dock. On October 23, Michalides signed a union card. During this same period, he returned his signed card and the 15 or 20 signed cards he had received from other McQuaide employees to Pine and Boyes.

During October and November, Michalides had three or four conversations about Local 24 with Dock Foreman Vallie Baker. The discussions concerned Local 24's support, and how Baker felt about it. In one such discussion, Michalides offered a union signature card to Baker. In response, Baker said he supported the Union but did not want to sign a card. He said he wanted to see how everyone else felt and what the outcome would be.⁵⁰

In the course of his employment, Michalides became familiar with McQuaide's policies regarding the proper procedure on discovering a freight shortage, an overage, or damage. The proper procedure was to mark the shortage, overage, or damage on a load/unload sheet and leave it near the

dock office. McQuaide also required dockmen to notify a dock foreman of freight shortages, overages, and damage.

During the first 2 months of his employment at McQuaide, Michalides discovered a freight shortage and reported it to Foreman Bill Robertson. Robertson instructed Michalides to mark the unload sheet, put it where it belongs in the dock office, and place the affected load near the same office and not bother the foreman. Thereafter, Michalides complied with Robertson's instructions whenever he encountered a shortage.

During his last year of employment at McQuaide, Michalides encountered shortages in counting freight, four or five times per week. In each instance, he followed Robertson's instructions. He did not report a shortage to a foreman. Prior to November 1991, McQuaide did not discipline him for failing to report a shortage to a foreman.

On July 8, McQuaide issued a written disciplinary warning to Michalides for faulty work. The warning noted that he now had six written warnings and cautioned that if he received one more, McQuaide would give him "time off."

Michalides began work at 5 p.m. on November 11, and worked until 2 a.m. on November 12. He and his partner unloaded a truck full of Eveready batteries that night and came up six boxes short on their count. Michalides marked the unload sheet "NF" showing that the six boxes were not on the truck.

When Michalides returned to work on Wednesday, November 13, he received a written warning for mishandling the Eveready batteries on the night of November 12. The warning asserted that the six boxes that were to be routed to three Hechinger locations in Pittsburgh and vicinity had gone to Value Drug in Altoona. Michalides worked on November 13.

Michalides reported for work on November 14. He could not find his timecard. Foreman Tony Kostyk came out of the office and said he could not let Michalides work, and that Michalides should call Operations Manager Mark McQuaide on November 15.

Michalides went to the Johnstown terminal on November 15 and asked to speak to Mark McQuaide. Mark appeared with Michalides' folder, and the two sat down at a table. Mark said he had to let Michalides go. Michalides did not comprehend and asked for an explanation. Mark said, "We have to let you go." Michalides asked, "How many days am I getting off?" Mark said, "No, we have to let you go." Michalides did not understand. He asked if he was fired. Mark answered, "Yes you are." Michalides asked whose decision it was. Mark said it was everyone's decision, "OS&D, dispatch, everyone's decision." Michalides ended the confrontation and picked up his paycheck.⁵¹

⁵¹ According to Mark McQuaide, on November 15, he did not intend to discharge Michalides, but wanted to discuss Michalides' shortcomings and suspend him for 2 days. Mark McQuaide also testified that when he began explaining his latest error, Michalides said, "I don't have f—king time for this. Are you going to give me time off or what?" Michalides flatly denied saying anything of the sort. In contrast with Michalides, who gave his testimony in a bland objective manner, Mark embellished his account with histrionics. Mark was trying to "sell" his story. Thus, Mark's demeanor cast doubt on the reliability of his testimony in this regard.

I find further reasons for doubting the reliability of Mark's testimony. Thus, Mark also testified that he did not consult with his father, Stan, about discharging Michalides. Yet, Stan testified that the

⁴⁹ Unless otherwise stated all dates regarding Barry Michalides' employment, union activity, and discharge occurred in 1991.

⁵⁰ My findings regarding his employment, union activity, and discussions with Foreman Baker are based on Michalides' testimony.

Michalides' employment record at McQuaide was blemished. Prior to November 15, McQuaide suspended Michalides once. On that occasion Michalides was absent due to his father-in-law's death. During his approximately 2 years and 3 months in its employ, however, McQuaide issued 19 warnings to Michalides because of faulty work. The last of these issued on November 14. On August 22, and again, on November 5, McQuaide issued a warning to Michalides, each for a mistake in loading. Despite the warning about time off issued to him in July, however, he received no time off for these loading mistakes.

b. Analysis and conclusions

The General Counsel contended that McQuaide discharged Michalides because of his involvement with Local 24's organizing campaign. McQuaide argues that the General Counsel has not shown that Michalides' union activity was a motivating factor in its decision to discharge him.

From September until November, Michalides openly supported Local 24's organizing campaign at McQuaide's Johnstown terminal. He distributed its campaign literature to McQuaide's employees on the dock and in the lunchroom. During the same period, he openly distributed signature cards for Local 24 at the same locations.

Michalides did not keep his prounion sentiments a secret from McQuaide's management. During October and November, he discussed Local 24 and its support with Foreman Vallie Baker. During these discussions, Michalides demonstrated his active support for Local 24. He asked Baker to sign a card for Local 24.

While Michalides was busy assisting Local 24, Region 8 was processing Local 24's petition for an election among McQuaide's Ohio drivers. Following a hearing on October 18, the Regional Director, on November 8, issued a Decision and Direction of Election, in which he found that the appropriate bargaining unit for Local 24 included McQuaide's Johnstown and Bethel, Pennsylvania facilities. In any event,

two had conferred prior to November 15, and had agreed on a discharge for Michalides because of his poor performance. Although I do not credit Stan's testimony as to McQuaide's motive for discharging Michalides, I have credited his assertion that he and his son decided on Michalides' discharge after the Eveready battery incident, just prior to November 15. As vice president of operations, Stan's responsibility included the operation of the Johnstown dock. Therefore, I find it likely that Mark consulted with him before discharging dock employee Michalides.

Further, Mark testified that as of November 15, "I didn't know that the union was going on." The record casts serious doubt on the reliability of this denial. On September 26, after about 3 weeks of union activity at McQuaide's Ohio facilities, Local 24 had filed a petition for an election with the Board. Uncle Lee had attended the Board's hearing on that petition in October, and on November 8, the Regional Director for Region 8 issued a Decision and Direction of Election, finding that the appropriate unit for bargaining was all of McQuaide's dockmen, mechanics, and drivers. The record also makes clear that Mark's father and uncle were hostile to, and well informed about, Local 24's and the Union's active employee support during the autumn of 1991. As a member of the McQuaide family, I find it likely that Mark knew "that the union was going on" by October 10, the date of the hearing. Thus, I have not credited Mark's denial of knowledge of the Union and of union activity among McQuaide's employees.

Lee McQuaide was concerned enough about Local 24's petition to have attended the hearing.

Lee's concern that Local 24 might succeed in organizing at least some of McQuaide's employees provoked him to attend the hearing on October 18. This same concern caused him to find out who among the Ohio drivers were trying to bring in Local 24 and later, Local 429. I find it likely that Lee was equally anxious in October and November to identify the union activists among his Johnstown-based employees. After all, McQuaide was urging that only a systemwide unit of its employees was appropriate for bargaining. If there was to be an election in that unit, Lee wanted to defeat whichever union would be involved.

I also find it likely that Lee used his foremen, including Baker, to find out who among McQuaide's employees were helping Local 24. Thus, when Michalides asked Baker to sign a card for Local 24, Lee soon heard about it. In turn, Stan, who had frequent contact with Lee, and Stan's son, Mark, quickly learned that Michalides was an active union supporter.

The record makes clear that McQuaide's management was hostile toward employees who supported Locals 24 and 429. As found above, in September 1991, at Johnstown, Dock Foreman Locker unlawfully warned employees Jack Boyes and John Pine that McQuaide would fire them if they attempted to organize for a union. This warning gained substance when McQuaide unlawfully terminated Jack Boyes in August 1992, and when Lee resorted to a pretext to discharge union activist Robert Marshall on November 5, 1991, in violation of Section 8(a)(4), (3), and (1) of the Act. Thereafter, as found above, McQuaide repeatedly used unlawful terminations to rid itself of union activists among its Ohio employees. Thus, Michalides' union activity, if known to, or suspected by, the McQuaides might well have provoked their antiunion sentiment.

The timing of Michalides' discharge suggests that McQuaide was motivated by his union activity. November 15, the date of Michalides' discharge, was only 1 week after the issuance of the Regional Director's Decision and Direction of Election. Also, the discharge followed in the wake of a series of conversations about Local 24 between Michalides and Foreman Baker, in which the employee had asked the foreman to sign a union card.

In sum, the evidence shows that prior to Michalides' discharge McQuaide's management knew of his active support for Local 24, and had shown by repeated violations of the Act that it was hostile to employees who engaged in union activity. I also noted that McQuaide discharged Michalides soon after he had asked a supervisor to sign a union card and only 1 week after the Regional Director's Decision and Direction of election, which included Michalides and his fellow Johnstown employees in the voting unit. From these circumstances, I find that the General Counsel has made a prima facie showing that union activity was a motivating factor in McQuaide's decision to discharge Michalides on November 15.

In its brief, McQuaide argues that the evidence shows that it discharged Michalides because he violated McQuaide's rules and had a poor work attitude. Stan flatly denied that union activity played any role in his decision to approve Mark's recommendation that Michalides be discharged on

November 15. Mark denied that he even knew there was any union activity going on when he discharged Michalides.

At the outset, the record is uncertain as to the source of the decision to discharge Michalides. On November 15, Mark McQuaide told Michalides that it was not Stan's decision to fire him, but that "it was everyone's decision, OS&D, dispatch, everyone's decision." In his testimony, Mark takes credit for the decision to discharge Michalides. McQuaide's brief asserts that this was the first time that Mark had discharged anyone "on the spot." According to Stan, he agreed with Mark's recommendation that Michalides be discharged prior to its implementation.

Shifting and inconsistent reasons cast further doubt on McQuaide's explanation for Michalides' discharge. Stan testified that Mark accompanied his recommendation that Michalides be discharged with the following remarks:

That he had just accumulated so many mistakes and errors that it was evident to him that [Michalides] just had a poor attitude and that he wasn't going to get any better, and he just didn't see any place to go with him, and he thought we should terminate him.

Mark testified that he began his encounter with Michalides on November 15, with a discussion of the Eveready battery error and would not have discharged Michalides on that occasion. Instead, according to Mark, he "would have gave him two days off." But when Michalides said, "I don't have f—king time for this. Are you going to give me time off or what?" Mark felt compelled to discharge him. Mark did not mention anything about Michalides' earlier written warnings as playing any part in his decision to fire the employee. Yet McQuaide's brief claims that Michalides was terminated for "a poor work attitude and violation of Company rules." The inconsistencies in McQuaide's attempt to support its defense suggest that it is improvising and that the real explanation involves union activity.

McQuaide's brief points to the eight written warnings Michalides had received in 1991, prior to the Eveready battery incident, as evidence of a poor work attitude warranting discharge. There was no showing that, however, Mark or Stan had warned Michalides of termination when he received the eighth warning on November 5. Indeed, when McQuaide issued the sixth warning to Michalides on July 8, it added a written declaration that the next warning notice would result in "time off." "Despite that declaration, McQuaide issued warnings to Michalides on August 22 and again on November 5, both for errors in his work, without giving him any time off. Thus, on November 15, McQuaide's changed attitude resulted in punishment far exceeding what had been threatened in July. McQuaide's brief and Mark conceded that the Eveready incident warranted only 2 days off. Their effort to justify the discharge rests on their claim that Michalides precipitated it when he employed insubordinate language in his confrontation with Mark. However, I have found that Michalides did not use such language on November 15. Thus, McQuaide's explanation lacks substance.

In sum, I find that McQuaide has failed to rebut the General Counsel's strong showing that union activity was a factor in McQuaide's decision to discharge Michalides on November 15. I find, instead, that McQuaide seized on the Eveready incident and added the fiction of insubordination to

mask the real reason for the discharge. The real reason was Michalides' solicitation of signed cards for Local 24. Getting rid of Michalides was likely to damage union organizing at Johnstown and help McQuaide in the election which the Regional Director for Region 8 had directed on November 8. Accordingly, I further find that by discharging Michalides on November 15, McQuaide violated Section 8(a)(3) and (1) of the Act.

5. Randy Hunter

a. *The facts*

McQuaide has employed Randy Hunter as a truckdriver at its Johnstown terminal since 1987. In a conversation with employee Robert Marshall, Hunter first learned of Local 24's campaign in September or October 1991.⁵² Marshall told Hunter that McQuaide's Ohio drivers were trying to have a union. On October 22, Hunter signed an authorization card for Local 24.

In November, Hunter became active in Local 24's organizing campaign. At that time, Marshall and Tom Boyes told Hunter that Local 24 was trying to organize the entire McQuaide system. Hunter agreed to help the local by passing out authorization cards. He collected at least 50 cards from McQuaide employees and turned them in to Local 24, in Akron, Ohio. He wore union hats and pins while working on the road, and at the Johnstown terminal including the dispatch office.

Hunter's interest in the organizing drive continued when Local 429 displaced Local 24. On January 11, 1992, Hunter signed an authorization card for the Union. He also helped set up Local 429's meeting with McQuaide employees at the Scalp Level Fire Hall, near Johnstown, which took place on that same date. He attended a second meeting with Local 429, in June 1992, at the nearby Windber American Legion.⁵³

In a confrontation on January 10, 1992, described in detail above, Lee McQuaide coercively interrogated Hunter about his union activity, gave Hunter the impression that his union activity was under surveillance, and threatened Hunter with a punch in the nose if he had anything to do with the Union.

As I found, above, John Plummer, another member of McQuaide's management, singled Hunter out to warn against supporting Local 429. On June 9, 1992, 2 days before the beginning of the mixed mail and manual representation election among McQuaide's employees, Plummer held out the possibility of a wage increase if the employees rejected Local 429. He also warned that Lee would shut down McQuaide if Local 429 won.

On June 27, 1992, Hunter and employee Joseph Patula served as Local 429's morning observers at the manual representation election. After the polls closed, Hunter and Patula were standing in the election area. Operations Manager Mark McQuaide, while talking to someone, looked right at them, as they stood, and said: "Over there is the two assholes that started all of this."⁵⁴

⁵² Unless otherwise stated, all dates regarding Randy Hunter's occurred in 1991.

⁵³ My findings of fact regarding Hunter's employment and union activity are based on his uncontradicted testimony.

⁵⁴ Mark McQuaide, in response to a leading question, denied making the quoted remarks. However, as Joe Patula and Randy Hunter

On October 8, 1992, Westinghouse Supply Company (WESCO) employee Martin Richie was very unhappy with the service he was receiving from McQuaide that week. He called Lee McQuaide. Richie complained and asked that the next day's delivery be made to WESCO between 7:30 and 8 a.m. Lee instructed dispatch to schedule the delivery to WESCO for a 7 a.m. delivery. On the evening of October 8, 1992, Hunter learned from Dispatcher Paul Swartz that he was scheduled to make that delivery at 7 a.m., on the following morning.

At 3:30 am on October 9, 1992, Hunter received a telephone call from McQuaide's Johnstown terminal reminding him of his WESCO delivery and advising him to: "Make sure you are on time." Hunter knew that WESCO's gate opened at 8 a.m. By 5:30 a.m. that same day, Hunter was outside McQuaide's gate, headed for WESCO, 113 miles away. He arrived at his destination at 8 a.m. or a few minutes after, and found Richie just opening the gate. Hunter backed straight in through the open gate. Hunter went to an office at WESCO, where he heard Richie telephone Lee McQuaide and thank him for the timely delivery.

Later, on the same day, Hunter arrived at Johnstown's dispatch and found a warning notice dated October 10, 1992, in his mailbox, which reported that he had been tardy in making a delivery to WESCO on the latter date and had performed substandard work. The notice said that WESCO had made a special request for a 7 a.m. delivery, that Hunter was scheduled to leave Johnstown at 4 a.m., that Hunter was reminded again at 3 a.m., that Hunter did not report for work until 6:30 a.m., and that he "did not deliver until 8:05 a.m." Stan McQuaide's signature showed that he had issued this warning.

Hunter took the warning and phoned Stan on October 12, 1992, to complain about its inaccuracies. Stan said he would look into the matter. In passing, Hunter asked why he had to be at WESCO at 7 a.m., "when the place don't open until 8." Stan replied, "Because we wanted you to."⁵⁵

On the following day, Stan provided Hunter with a revised warning notice stating that Hunter was "scheduled to deliver to WESCO . . . at 7 a.m. 10-09-92." This notice also stated that Hunter was reminded "at 3:30 a.m. 10-10-92; yet you did not report to work until 5:15 a.m. and did not arrive at WESCO until 8:05 a.m." The warning stated that Hunter had performed substandard work and had been tardy.

On receiving the revised warning, Hunter approached Mark McQuaide and asked why he should sign it, as he had arrived at WESCO on time. Mark replied in substance that unless Hunter signed it, McQuaide would not line him up for work. Hunter signed the warning.

Hunter made his next delivery at WESCO on February 15, 1992. As instructed by Stan, he arrived there at 7 a.m. only to find the gates locked. Hunter contacted Johnstown dispatch and advised that the gates were locked and that he had parked his tractor and trailer on the street. Hunter expressed concern about receiving a parking citation and asked for permission to remain parked. The dispatcher, Roger Locher, re-

plied that he could not grant such permission. Locher added that Stan was not expected at work before 8 a.m. The gate opened at 8 a.m. and Hunter backed in.

At about midday, on November 4, 1992, Hunter made a delivery of Haskel furniture to the Commonwealth of Pennsylvania's Job Center, at Ambridge, Pennsylvania. Ronald Kim, the acting manager of the job center, was in his office when Hunter arrived to make the delivery. Kim directed that the furniture be delivered to a conference room in the building. After Kim issued his instructions, he heard a discussion between Hunter and a clerical employee, Johanna DiCiccio, about the delivery. Kim heard DiCiccio asking "what's the purpose in having inside delivery—why are we paying for inside delivery?"

Kim came into the discussion in time to hear Hunter say: "We don't do inside deliveries." Hunter added that he did not have a dollie on his truck. As Kim began following Hunter out to the truck to accept the furniture and carry it to the conference room, three other job center employees joined in the project.

When the four job center employees and Hunter arrived at the truck, Kim saw that it was blocking the egress of employees who might want to go out for lunch. He asked Hunter to move the truck close to a storage room to alleviate the blockage and complete the delivery. Hunter complied with Kim's request. Then, from the back of his truck, Hunter pushed the furniture off of the truck into the hands of the waiting job center employees. The four men moved the furniture to the storage room's door and left it there.

Hunter and Kim returned to the job center office. Kim signed the bill of lading which had the notation "inside delivery charge." Hunter told him that the bill included an inside delivery charge which McQuaide might remove if Kim were to call McQuaide. Neither Kim nor any of his colleagues complained to Hunter about his performance on the day of the delivery.⁵⁶

By memorandum to a state agency, dated November 10, 1992, James Mackin, manager of the Ambridge Job Center, complained about Hunter's delivery on November 4, 1992. The letter reported that he refused to make the inside delivery called for in the bill of lading. The letter also disclosed Hunter's assertions that "we don't do inside deliveries" and that he did not have a dolly on his truck. McQuaide received a copy of the memorandum at some time prior to December 8, 1992. I find from Stan's uncontradicted testimony that a representative of Supply Source, the vendor of the furniture delivered on November 4, also complained to him in a phone call, sometime prior to December 8.

On November 23, 1992, Local 429 filed an amended unfair labor practice charge against McQuaide, in Case 6-CA-24636, alleging, inter alia, that McQuaide had discriminated against Hunter in January 1992 because of his membership in and activity on behalf of Local 429 and Local 24. This was the first mention of Hunter in the charges filed against McQuaide by the Charging Parties in this proceeding. On

impressed me as being more forthright witnesses than Mark, I have credited their testimony in this regard.

⁵⁵ My findings of fact regarding the conversation between Stan and Hunter on October 12, 1992, are based on their testimony. Stan did not deny Hunter's credited testimony regarding the exchange in which Hunter asked why he had to be at WESCO at 7 a.m.

⁵⁶ I based my findings regarding Hunter's Ambridge deliver on Ronald Kim's testimony where it differs from Hunter's. Of the two, Kim seemed to be more careful in recounting the incident. Hunter seemed to be staying away from those portions of the incident which might reflect poorly on his conduct. I also note that Kim's testimony is largely corroborated by a memorandum dated November 10, 1992, which I refer to in the next paragraph.

November 24, 1992, Region 6 served a copy of the amended charge on McQuaide by mail, at its Johnstown address.

When Hunter called in to Johnstown dispatch for an assignment, on December 7, 1992, Dispatcher Barry Horner said there would be none and that Hunter had to meet with Lee. Hunter pressed Horner for a reason. Horner answered that the rumor in dispatch was that it had something to do with the filing of charges.

The following day, Hunter walked into Lee's office. Lee tried to shut the office door, but Hunter pushed it open. Lee wrested the door from Hunter and closed it. Hunter insisted that the door be opened, as the two did not trust each other. Hunter also said that there would be no more of Lee "mother f—king him or threatening to kick his ass." Hunter said the door would remain open or he would record the conversation. Lee said, "I don't give a f—k what you do." Hunter did not record the conversation.

Lee said he had problems with Hunter's Westinghouse (WESCO) and Haskel (Ambridge) deliveries and would give him 1 week off. Hunter said: "That's a pretty damn poor excuse. I know why I'm in here. Why don't you just fire me? Why don't you just get rid of me? Get it over with. That's what you are going to do anyhow. Why don't you just fire me?" Lee said he would do as he pleased and that he had problems with the two deliveries. Lee gave Hunter a 1-week suspension and ended the conversation.

For 1990, Hunter earned a little more than \$35,000 in McQuaide's employ. In 1991 and 1992, respectively, he made \$32,000, working for McQuaide. When he testified on May 25, 1993, in these cases, Hunter estimated that he would be lucky to make \$28,000 from McQuaide for the year.⁵⁷

At the end of January 1992, Dispatcher Thomas Rhodes, in the presence of employee Alan Mickey, announced to Hunter that Lee had directed the dispatchers to cut back the work of Randy Hunter and his brother Pat because they were "union trouble."⁵⁸

McQuaide's records show that for 1991, it assigned 191 trips to Hunter, with a variety of Ohio and Pennsylvania destinations. McQuaide's records also show that it assigned 200 trips to Hunter for 1992 to various destinations in Ohio and Pennsylvania. I also find from McQuaide's records that 1992 showed a total decrease of 14.2 driving and incentive hours⁵⁹ in comparing Hunter's 1991 driving with his 1992 driving. The record does not include any figures for Hunter's driving in 1993.

b. Analysis and conclusions

The General Counsel has made a *prima facie* showing to support his contention that McQuaide issued disciplinary warnings to Hunter as punishment for his union activity. The

⁵⁷ My findings regarding Hunter's earnings at McQuaide for 1990–1993 are based on his uncontradicted testimony.

⁵⁸ In response to leading questions, Rhodes denied telling Hunter that Lee had directed a reduction in his and brother Pat's work. However, employee Alan Mickey was a convincing witness as he corroborated Hunter's recollection of a conversation on or about January 31, 1992, in which Rhodes threatened Hunter and his brother with a loss of work. Accordingly, I have credited Mickey and Hunter regarding Rhodes' threat.

⁵⁹ The record does not explain the terms "driving hours" or "incentive hours" as used in McQuaide's records.

record shows that by January 10, 1992, Hunter's suspected union activity had provoked Lee McQuaide into having a confrontation with him on that date. In abrasive remarks during that meeting, Lee lumped Hunter with the Union and an expletive. Lee dismissed Hunter's denial of having anything to do with it, remarking that at least 30 employees had told him that Hunter was passing out union cards and talking union. Lee also said he knew that Hunter was using his truck's CB radio to obtain signed union cards. Lee ended the conversation with a threat of physical assault on Hunter if Lee confirmed Hunter's part in the Union's organizing. However, I find that Hunter's open support for Local 429 was known to Lee by the date of this confrontation.

Hunter provided further evidence of his support for Local 429 on June 27, 1992, when he served as one of its observers at the representation election among McQuaide's employees. Lee's nephew Mark spotted Hunter and referred to him and another union supporter as "the two assholes that started all of this." Stan's and Lee's demonstrated interest in ferreting out union activists and their concern about defeating Local 429 must have been known to Mark. As one who shared his father's and uncle's hostility toward Hunter's union activity, Mark was likely to report to them that he had seen Hunter acting as one of Local 429's observers at the election.

The record is replete with evidence of McQuaide's willingness to resort to economic reprisals against union activists. Stan and Lee repeatedly used discipline or discharge to punish employees for supporting Local 24 or Local 429. Thus, in light of Lee's verbal assault on Hunter on January 10, 1992, and Mark's unfriendly reference on June 27, 1992, to his union activity, Hunter was a likely candidate for punishment at McQuaide's hands.

The WESCO incident, on October 9, 1992, presented Lee and Stan with an opportunity to punish Hunter for his active support for Local 429. The speed with which Stan acted to greet Hunter at the end of that day with a carelessly drawn warning notice, accusing him of being late at WESCO, was but one more ingredient in the General Counsel's strong showing of unlawful motive.

McQuaide contends that Hunter's failure to follow instructions on October 9, 1992, was the only reason for the warning notices it issued to him in connection with the WESCO incident. However, there is credited testimony which impairs this explanation and adds support to the General Counsel's contention. For, I find from the uncontradicted testimony of former McQuaide employee John Snyder that McQuaide treated Hunter disparately. Thus, according to Snyder, during his employment at Johnstown's dispatch, from September 1989 until January 1993, he observed that McQuaide did not punish "quite a few" drivers who had made late deliveries. Snyder also named employees Ross Miller Jr. and Paul Wingert as examples of drivers who made late deliveries and did not receive written warning notices.

Had Hunter not been a persistent union activist, I have no doubt that Lee or Stan would have scolded him for failing to follow instructions. I find contrary to Stan's testimony, however, that his haste to issue a warning to Hunter was not motivated by that failure.

Instead, I find from the evidence recited above, that McQuaide's hostility toward Hunter arose from his insistence on supporting Local 429. This hostility motivated Stan to

seize on Hunter's deviation from Lee's instructions as a pretext for inflicting a written warning on an annoying union activist. Accordingly, I find that by the issuance of the two written warnings to Hunter, on October 9 and 13, 1992, respectively, McQuaide violated Section 8(a)(3) and (1) of the Act.

The General Counsel has alleged that McQuaide violated Section 8(a)(4), (3), and (1) of the Act by suspending Hunter for 1 week on December 8, 1992. McQuaide denies that the suspension violated the Act as alleged and claims that his failure to make an inside delivery at the Ambridge Job Center caused Lee to suspend Hunter for 1 week. I find that the record supports the General Counsel's allegations.

The same *prima facie* showing of unlawful motive, which I have recited in connection with the October 1992 disciplinary warnings, supports the contention that the 1-week suspension in December was motivated by Hunter's union activity. However, my findings that McQuaide issued the disciplinary warnings to punish Hunter for assisting Local 429 reinforces the *prima facie* showing with respect to the suspension.

McQuaide argues that Hunter's refusal to make an inside delivery on November 4, 1992, at Ambridge, not union activity, motivated Stan and Lee to suspend him for 1 week on December 8, 1992. Unexplained is why they waited until December 8 to punish Hunter for his misdeed on November 4. The Job Center's internal memorandum complaining about Hunter's performance was dated November 10. McQuaide has not provided any date for its receipt of a copy of that memorandum or of the telephoned complaint from Supply Source.

The one intervening significant date which has been ascertained is November 23, 1992. For on that date, Local 429 filed an amended unfair labor practice charge, which for the first time, named Hunter as a union activist, who had suffered discrimination at McQuaide's hand. On November 24, 1992, a copy of that charge was mailed to McQuaide's Johnstown office. Then, on December 7, 1992, Dispatcher Barry Horner withheld work from Hunter. When Hunter asked why, Horner said there was a rumor in dispatch that it had something to do with Hunter's filing unfair labor practice charges. On the following day Lee suspended Hunter for 1 week.

Local 429's amended charge alleging that Hunter had suffered a loss of work on January 26, 1992, because of his activities on behalf of Locals 24 and 429 must have annoyed Lee. Back on January 10, 1992, Lee had accused Hunter of helping the union organizing drive and, in a rage because he believed that Hunter was a union activist, had threatened to punch him in the nose. Thus, I find Lee was motivated by his hostility toward Hunter for helping Locals 24 and 429 and his belief that Hunter had allied himself with them in filing an unfair labor practice charge when he punished Hunter on December 8 with a 1-week suspension. I further find, therefore, that Lee seized on the Ambridge incident as a pretext for the suspension and thereby violated Section 8(a)(4), (3), and (1) of the Act.

The General Counsel's allegation that beginning on January 26, 1992, Hunter suffered a change in his routes and a loss of working hours lack's adequate evidentiary support. The record shows that 1992 did not show any reduction in either Hunter's total trips or his hours of work at McQuaide.

As for 1993, the parties did not offer any records to allow either a comparison of any portion of 1993 with comparable portions of 1991 or 1992 or to permit a projection for 1993. Hunter testified on May 25, 1993, that he would be lucky to make \$28,000 from his employment at McQuaide for the year 1993. The record does not show how many trips Hunter took for McQuaide in 1993. Nor does it show how his 5 months' earnings from McQuaide in 1993 compare with those of other McQuaide drivers. Hunter's estimate of his 1993 earnings is too slender a reed upon which to base a finding that McQuaide reduced his hours of work in 1993. Thus, I find that the General Counsel has not shown by a preponderance of the evidence that McQuaide reduced either Hunter's trips or his working hours beginning on January 26, 1992.

However, Dusty Rhodes' remark that Lee had told the dispatchers to cut back Randy and Pat Hunter's work because they were union trouble was likely to interfere with, restrain, and coerce McQuaide's employees in the exercise of their right under Section 7 of the Act to support a union. I find therefore that by that remark McQuaide violated Section 8(a)(1) of the Act.

6. Ivan Wilson

a. *The facts*

McQuaide employed Ivan Wilson as a power unit mechanic for 9 years. He performed general maintenance on all of McQuaide's trucks. Wilson worked under alternating supervisors, Foremen Russ Gaston and Harry Claycomb. Director of Maintenance John Plummer was Gaston's and Claycomb's superior and was in charge of the entire garage. Plummer laid off Wilson on January 9, 1992.

In December 1991,⁶⁰ Wilson asked Plummer if it wouldn't be better for the employees to let the Union take charge of their insurance, instead of taking so much out of the employees' paycheck, and just pay union dues. Plummer said he would check on it. On the following day Plummer told Wilson that Safety Director Randy McQuaide said it probably would be easier to let the Union handle the employees' insurance. Plummer made some negative remarks about the Union. Plummer also said, in substance, that for younger people in the Union, the Union was not standing behind their insurance.⁶¹

Wilson did not sign a union card. Nor did he engage in union activity.

When Wilson reported for his shift on January 9, he was told not to punch in, but to see Plummer. Plummer laid off Wilson along with employees Curt Livingston and Joe Vinisky. The three asked Plummer why he was laying them

⁶⁰ Unless otherwise stated, all dates regarding Ivan Wilson occurred in 1992.

⁶¹ According to John Plummer's testimony, he believes that employee Dave Brennan, who has since quit, was the only employee who spoke to him about the Teamsters fringe benefit plans. Plummer was not sure that Ivan Wilson was present when Brennan discussed the Teamsters fringe benefits. Plummer seemed uncertain about this incident. In contrast, Ivan Wilson testified with certainty and in an objective manner about the conversations he recalled having with Plummer. As Wilson struck me as being the more reliable witness, I have credited his testimony about his conversations with Plummer.

off. He replied that they did not look as busy as other people and were more capable of finding another job.⁶²

Plummer laid off a fourth mechanic, his son John Plummer Jr. John Jr. worked on air-conditioning and heating. Of the four, McQuaide recalled only one, John Jr. John Plummer Sr. recalled his son at the end of March or the beginning of April 1992 to meet the need for air-conditioning repairs.

On January 10, Wilson sought further explanation from Lee McQuaide. When Wilson asked why McQuaide had not picked younger employees to lay off, Lee answered that Wilson, Livingston, and Vinisky did not look as busy as the other people and there was a lack of work. Lee added that McQuaide had evaluated them.

At the time of these layoffs, Plummer's Johnstown maintenance shop employed 35 mechanics with different skills. Of these, 13 were power unit mechanics. At the end of September 1993, when Plummer testified in these proceedings, he supervised between 50 and 60 mechanics. McQuaide has not offered reinstatement to Ivan Wilson.

b. Analysis and conclusions

Plummer testified in substance he was not aware that Wilson had anything to do with the Union, and that in his opinion Wilson "would be the last one" to prefer or support the Union. However, the record does not support Plummer's gratuitous comment about Wilson being "the last one." For, I have found from Wilson's testimony that in December he suggested to Plummer that it might be a good idea for the employees to have a union for insurance benefits. In the strong antiunion climate which gripped McQuaide's system at that time, a member of its management was likely to be alert to such expression of interest in having the Teamsters or any union as bargaining representative. The same member of management would be likely to remember that suggestion of prounion sentiment when called on to select employees for layoff.

As its director of maintenance, Plummer was aware of McQuaide's strong hostility toward employees who supported Locals 24 and 429. For by January, McQuaide's management was combating its employees' union activity with threats of reprisal, coercive interrogation, the impression of surveillance, and the discriminatory discharge of employee Marshall. Much of this and subsequent unlawful conduct occurred at Johnstown, where Plummer's maintenance shop was located. His testimony shows that in January Lee contacted him directly about reducing the employee complement in the maintenance department. Thus, I find that by the time he selected four employees for layoff in January, Plummer was aware of McQuaide's desire to prevent a union from organizing its employees and knew that resort to economic reprisal was acceptable to his superiors. In sum, I find that the General Counsel has made a prima facie showing that Plummer selected Ivan Wilson for layoff because he expected Wilson to support Local 429.

McQuaide contends that the General Counsel has failed to show that unlawful motivation caused Plummer to select Wilson for layoff. Instead, according to McQuaide's brief,

Plummer's testimony shows that he selected Wilson because of faulty work performance. However, I find no merit in McQuaide's explanation.

Plummer's testimony did not square with the explanation he gave Wilson on January 9. On that date, Plummer told Wilson, Vinisky, and Livingston that he was laying them off because they did not look as busy as other employees and they were more capable of finding other employment. Nor was Plummer's testimony consistent with Lee's explanation on January 10. On that occasion, Lee mentioned an evaluation together with a lack of work and that the three employees did not look as busy as the other mechanics. Before me, Plummer abandoned those explanations. He testified that the only reason he selected Wilson was "[h]is job performance." These shifting and inconsistent reasons for Wilson's layoff suggest that Lee McQuaide and John Plummer were trying to come up with a plausible excuse. Thus, have Lee and Plummer cast serious doubt on the reliability of their testimony in support of McQuaide's defense.

In its haste to explain, McQuaide did not adequately substantiate its proffered explanations for selecting Wilson rather than another of the 13 power mechanics in its employ. Plummer testified that he laid off Wilson for poor work probably 1 year earlier and that he and Lee withdrew that layoff when Wilson agreed to improve. Then Plummer went on to assert that, thereafter, Wilson's performance did not meet his and Lee's expectation. Plummer did not disclose what that expectation was. Plummer testified that Wilson's weakness was that "[h]e had to be working with somebody. He couldn't do anything by himself." Plummer did not provide any examples or any explanation of how that asserted shortcoming impaired Wilson's value as a power unit mechanic.

There is a further suggestion that McQuaide was using a hastily contrived explanation to escape a finding of a violation of the Act. There was no showing that Plummer or any other member of McQuaide's management ever warned Wilson in 1990 or in January 1991, prior to his layoff, that his performance was faulty or that he was not busy enough. Nor did McQuaide present any testimony or evidence to flesh out its claim that Wilson was less busy than other mechanics, who were retained as employees in January 1992. On the contrary, I find from Wilson's testimony that McQuaide never issued an evaluation to him and that his immediate supervisors praised his work. Also, at the time of his layoff, Wilson observed only a reduction in backlog work, i.e., "work that was piled up."

In sum, I find that McQuaide has failed to come up with a credible explanation to rebut the strong showing that hostility toward Local 429 motivated Plummer's selection of Ivan Wilson for layoff on January 9, only a few weeks after the employee had shown interest in union representation. I find, therefore that by Plummer's conduct in this regard, McQuaide violated Section 8(a)(3) and (1) of the Act.

7. The layoffs at Johnstown's dock (Raymond Webb, David Rich, Timothy Wingard, Scott Bodenschatz, and Joe Patula)

a. The facts

McQuaide employed Scott Bodenschatz, Joe Patula, Raymond Webb, David Rich, and Timothy Wingard on its Johnstown dock. The following were their hiring dates at

⁶² My findings regarding Plummer's explanation to the three employees are based on Wilson's uncontradicted testimony. Plummer's testimony did not include any assertions regarding a discussion with the three employees on January 10.

McQuaide: Bodenschatz—July 1988; Patula—September 1987; Webb—September 1981; Rich—August 1990; and Wingard—May 1989.⁶³

Beginning with Bodenschatz, all five were active in Local 24's and Local 429's organizing campaign at McQuaide's Johnstown facility. In late and mid-October, Bodenschatz distributed 10 to 15 blank union authorization cards at Johnstown, on the dock, inside trucks, and in the lunchroom. He collected 10 to 15 signed union cards, which he turned over to Barry Michalides, for Local 24. Bodenschatz signed a union card on October 22, 1991. In late October and early November 1991, he passed out 20 copies of a prounion pamphlet on the Johnstown dock, in the breakroom, in the lunchroom, and in trucks. In mid-December 1991, Bodenschatz passed out 20 to 25 cards for Local 429 and gave stacks of similar cards to other employees, including Joseph Patula, for distribution at McQuaide. Bodenschatz left the blank cards on the dock, inside trailers, in the lunchroom, and on the parking lot near the terminal. In the same month, Bodenschatz helped Local 429 organize a union meeting with McQuaide's Johnstown employees.

In October 1991, dock employee Joseph Patula handed out between 70 and 100 union cards to dock workers and truckdrivers at McQuaide's Johnstown terminal. During the same month, Patula spoke in support of the Union to 15 to 20 employees at Johnstown. He also handed out union literature to fellow employees. He received about 25 signed union cards from McQuaide employees, which he gave to employees John Pine and Jack Boyes for Local 24. On October 23, Patula signed a union card for Local 24. Two months later, he signed a card for Local 429, and mailed it to the local's Reading office. In February 1992, Patula distributed a quantity of Local 429's cards to employee Timothy Wingard. Patula served as an observer for Local 429 at the representation election, on June 27, 1992.

Raymond Webb passed out 5 to 10 union cards at Johnstown in September and October 1991. He also received five signed cards during that period, and signed one for Local 24 on October 23, 1991. Webb also signed a card for Local 429 on January 11, 1992. During January 1992, he attended a union meeting and handed out 35 to 40 cards for Local 429. In the same month, Webb received about 35 signed cards, which he turned in to Local 429. Webb also attended a union meeting in June 1992. During the week of June 22, 1992, Webb showed support for Local 429 by wearing a Teamsters hat on the Johnstown dock. At the election on June 27, 1992, he assisted Local 429 as an observer.

David Rich signed a card for Local 24 on October 23, 1991, and a second card for Local 429 on January 11, 1992. Rich asked eight McQuaide employees to sign cards. He handed out five cards and received five signed authorization cards which he turned over to another employee, who was assisting the union campaign. Rich also attended two union meetings in 1992, one at the Scalp Level Fire Hall, and the second at the Windber American Legion.

On October 23, 1991, Timothy Wingard signed a card for Local 24. In January 1992, he signed a card for Local 429. In February 1992, Wingard received a quantity of cards from

Patula to obtain signatures for Local 429. As his home was near the Johnstown terminal, Wingard invited McQuaide employees there to sign cards for Local 429. Five or ten employees signed cards at Wingard's home.

Bodenschatz, Patula, Webb, Rich, and Wingard revealed their union sentiment in confrontations with McQuaide's Johnstown management. In late October or early November 1991, Bodenschatz, in remarks to Foreman Ron Locker, said he thought "things would be straightened out if we could get organized and get a union in [McQuaide]." During the same period, Bodenschatz spoke of his support for the Union to Foreman Vallie Baker, and asked him if he wanted a union card. Bodenschatz said he would put a union card on a skid so Baker could pick it up if he wanted to. Baker smiled, laughed, and walked away.

In a second encounter, about 2 weeks later, on the Johnstown dock, Baker asked Bodenschatz how the union drive was going. Bodenschatz answered, "Really well." He went on to explain that many employees favored the Union and that he believed that the "prounion employees had [a] good chance at voting the union in."⁶⁴

In November 1991, Patula gave a union authorization card to Foreman Vallie Baker. In response, Baker said he would like to be a shop steward if the Union came in. Baker did not sign the card in Patula's presence.

Patula spoke to Foreman Kostyk about Local 429 in December 1991 at the Johnstown dock office. Patula disclosed that he and other employees expected Local 429 to succeed in organizing McQuaide's employees, which would mean more money for the employees. Kostyk answered that such an increase would mean more money for supervisors as well.

In December 1991, Patula told Kostyk that there was a rumor on the dock that Kostyk had accepted a union card. Patula went on to ask the foreman if he had filled it out and sent it to Local 429. When Kostyk did not answer, Patula told him he could mail it to the address shown at the top of the card.⁶⁵

In January 1992, Webb gave one of Local 429's authorization cards to Foreman Baker. Webb told Baker he could sign the card and send it to Local 429, or he could throw it away. Baker took the card from Webb.⁶⁶

As found above, employee Robert Maticic conversed with Director of Maintenance Plummer on June 12, 1992, at McQuaide's Johnstown terminal. Plummer inquired if employee Raymond Webb was distributing cards for Local 429. Maticic said he did not know. At this, Plummer predicted: "Ray Webb, after this is all done, he'll be going down the road."

Webb wore his Teamsters hat in the presence of Foremen Ron Locker and Vallie Baker, during the week of June 22, 1992. On the night of June 24, 1992, Webb wore his Teamsters hat, while working on the Johnstown terminal dock. As found above, the following confrontation occurred: Mark McQuaide saw the hat and approached Webb, saying, "Nice hat you have on, Frog." Webb said, "Yeah, it is." Mark

⁶³ My findings of fact regarding the employment history and union activity of these five Johnstown terminal employees are based on their uncontradicted testimony.

⁶⁴ I have credited Bodenschatz' uncontradicted testimony regarding conversations with Foremen Baker and Locker about the Union.

⁶⁵ I have credited Patula's testimony regarding his conversations with supervisors about Local 429, and his expressions of support for the Union.

⁶⁶ My findings regarding Webb's offer of a union card to Foreman Vallie Baker are based on Webb's testimony.

continued, "You don't have the balls to wear that in front of Stan McQuaide." Webb responded, "I just don't need the hassle." Mark ended the exchange with, "You better hope the Union comes in because if it doesn't, I will remember you."

A few days before the Board's representation election dock employee David Rich expressed prounion sentiment to Foremen Baker and Locker. Rich told Locker that he supported the Union and expected Local 429 to win. Locker said the employees would be pretty stupid if they did not vote Local 429 in. Conversing with Baker, Rich expressed support for the Union and predicted its victory. Baker said he did not think the Union would succeed.⁶⁷

In three or four conversations with Foreman Kostyk in the spring of 1992, Timothy Wingard expressed prounion sentiment. Wingard asserted a need for a union to help the employees obtain improved conditions of employment and fringe benefits. Kostyk agreed that the Johnstown employees needed a union.

Wingard had three or four discussions with Foreman Baker about the employees' need for a union. In one instance, Wingard invited Baker to his home after work, and the two discussed the need for a union at McQuaide. Baker's opinion was that Local 429 would not succeed in organizing McQuaide's employees.

Locker and Wingard discussed the Union three or four times in the spring of 1992. These exchanges occurred in the dock office, or in a truck. Wingard mentioned the need for a union. On occasion, Locker asked what was going on with the Union and agreed with Wingard that the employees needed a union.⁶⁸

McQuaide laid off Bodenschatz and Patula on January 2, 1992. At the end of his shift, at 7 a.m., on January 3, Bodenschatz was instructed to call Mark McQuaide. He called Mark later that morning. Mark told Bodenschatz he was being laid off due to lack of work and evaluations. Bodenschatz asked, "Is this anything personal?" Mark answered no and the conversation ended without further comment. Mark filled out an employment termination report for Bodenschatz, giving lack of work as the reason for the layoff. Mark also indicated on the report that the lack of work was temporary. McQuaide has not recalled Bodenschatz.

At the end of his shift, on December 31, 1991, Foreman Vallie Baker gave a note to Patula directing him to contact Stan McQuaide. On January 2, 1992, Patula came to McQuaide's Johnstown terminal and spoke to Mark McQuaide. Mark laid off Patula after telling him that things were getting slow. Also, Mark assured Patula that his layoff would be only temporary. Mark gave his office telephone number to Patula and advised him to call it every other week and learn from Mark if the freight flow was picking up. Marked fill out an employment termination form for Patula, noting that this layoff was for a temporary lack of work.

After January 2 and until April 20, 1992, Patula phoned Mark every other week. Each time Mark answered that the freight had not picked up, but that he would keep Patula in mind.

⁶⁷ I have credited Rich's testimony regarding conversations with Foremen Locher and Baker about the Union.

⁶⁸ I have credited Wingard's testimony regarding his conversations with foremen regarding the Union.

On April 20, Patula filed an unfair labor practice charge in Case 6-CA-24491, alleging that McQuaide had laid him off on January 2, 1992, because of his union activity, and had thereby violated Section 8(a)(3) and (1) of the Act. On April 21, 1992, McQuaide received a copy of Patula's charge. A few days after he filed his charge, Patula called Mark and asked if the freight was picking up. Mark replied that freight had picked up a little bit. He added that McQuaide could not hire Patula back at that point because he had an unfair labor practice charge pending against McQuaide. Patula has not received any recall notice from McQuaide.

On June 27, 1992, Patula was present for the ballot count during the Board-held election among the Johnstown employees. During the tally, employees Patula and Hunter were standing together. As found above, Mark McQuaide stood nearby and in audible conversation, referred to them as "two of the assholes that started this."

On December 29, 1992, Mark McQuaide laid Raymond Webb off. Mark said he hated to lay Webb off, but things were slow. McQuaide's notice of employment change form states that on December 29, 1992, it laid Webb off for lack of work. An employment termination report prepared by McQuaide gives the same reason for Webb's layoff.

In late November 1991 or early December 1992, Foreman Ron Locker told employee Webb that David Rich would be one of the next ones to go. On December 28, 1992, McQuaide laid off Rich and has not recalled him.

McQuaide also laid off Timothy Wingard on December 28, 1992. Two or three days after Wingard's layoff, McQuaide employee Darl Pritt asked Foreman Kostyk why Wingard had been laid off. Kostyk answered that Wingard was a good worker, but it had to be on account of the Union.⁶⁹

b. Analysis and conclusions

The General Counsel urges that McQuaide laid off the five dock employees, discussed above, because of their union activity. McQuaide contends that union activity had nothing to do with any of the five layoffs. There is considerable evidence suggesting that union activity was a factor in Mark McQuaide's selection of dock employees Bodenschatz, Patula, Webb, Rich, and Wingard for layoff.

All five employees demonstrated and expressed support for Local 24, or Local 429, or for both well before their respective layoffs. They solicited support from other employees on behalf of the union organizing effort at McQuaide's Johnstown facility. Each revealed his prounion sentiment to management well before Mark selected him for layoff.

The record shows Mark McQuaide's persistent hostility toward employees who supported the union organizing effort. That hostility caused Mark to violate the Act. Indeed, on November 15, 1991, he seized on a pretext to rid McQuaide of union activist Barry Michalides. During the week of June 22, 1992, 6 months before he laid Webb off, Mark again showed his strong antiunion sentiment. He saw Webb's Teamsters hat and violated Section 8(a)(1) of the Act by warning: "You better hope the Union comes in because if it doesn't, I will remember you." The implication in this warning is

⁶⁹ My findings regarding Kostyk's remarks about Wingard's layoff are based on Pritt's testimony.

that if Local 429 does not win the election on June 27, 1992, Mark intends to punish Webb because he openly supported the Union. Local 429 did not win the election.

Fifteen days before the manual election, Maintenance Director Plummer predicted that when the organizing campaign had ended Webb would be leaving his employment. This prediction came after he asked employee Maticic if Webb was handing out union cards. In fact, Webb was. But Webb did more than hand out cards. He was flaunting his prounion sentiment by wearing a Teamsters hat in front of McQuaide's management. Mark made good on Plummer's prediction.

On June 27, 1992, Mark again showed his anger toward those who assisted the union organizing campaign. For, during the tally of ballots, he audibly described employees Patula and Hunter as "two of the assholes that started this."

Mark's hostility reflected the antiunion sentiments of Lee and Stan McQuaide. Lee and Stan, by their conduct, also provided Mark with guidance in how to combat the enthusiasm of prounion employees with the unlawful discharges and suspensions recorded in this decision. These discharges and suspensions spanned the period from late 1991 until early 1993. Mark, who shared Lee's and Stan's animosity toward Locals 24 and 429, carried out the layoffs of the five Johnstown union activists in that atmosphere. I find that the General Counsel has made a prima facie showing that animosity toward Locals 24 and 429 provoked Mark to lay off those five employees.

McQuaide contends that it selected Bodenschatz, Patula, Webb, Rich, and Wingard as a result of an annual evaluation of their attitude, performance, attendance, and dependability by foremen and selected employees. Thus, according to McQuaide, Mark laid them off after collecting and scoring the independent evaluations of the foremen and selected employees.

McQuaide claims that it laid off Bodenschatz, Patula, Webb, Rich, and Wingard because each received a low score in an annual evaluation of their attitude, performance, attendance, and dependability. In late 1991, Foremen Vallie Baker, Bill Robertson, Tony Kostyk, and Ron Locker evaluated the 50 or 60 Johnstown dock employees, including Bodenschatz and Patula. The foremen used an evaluation form for each of the dock employees and rated their attitude, performance, attendance, dependability, and leadership. The form permitted the foremen to rate each factor as excellent, good, fair, or poor. Work on the dock had slowed and Mark wanted to select five dock employees for layoff.

It is undisputed that the foremen used their own, individual, subjective impressions to grade the employees. Mark McQuaide provided them with neither guidance nor company records. Foreman Baker, for example, completed his forms at home. He did not check any records for attendance or discipline. He testified that, "It is just like a personal evaluation on his work. If you [are] around a guy long enough, you know how he is going to work. There is nothing for me to check." There was no showing that Foremen Locker and Kostyk followed any procedure different from Baker's. Former Foreman Robertson, who participated in the 1991 evaluation, testified that before checking the appropriate rating box, he consulted McQuaide's records for attendance, but used subjective judgment for the other four factors. The foremen turned their rating sheets in to Mark McQuaide.

According to Mark McQuaide, he set up a scoring system to rate each dock employee. Excellent received three points, good was worth two points, fair was worth one point, and poor received a zero. Mark did not complete a rating form. Nor did he tell the foremen how he scored their rating sheets. According to Mark's scoring, Bodenschatz and Patula were among the five lowest rated dock employees in the late 1991 evaluation.

In late 1992, Mark asked Foreman Ron Locker and employees Mark Dixon, David Roles, and Rodney Jennings to evaluate the approximately 50 dock employees, using the same procedure described above for the 1991 evaluation. Mark testified that he used the same scoring system to identify employees for layoff. According to Mark's scoring, Webb, Rich, and Wingard were among the nine dock employees with the lowest evaluations, all of whom Mark laid off in late December 1992. Again, Mark provided neither guidance nor records to the evaluators. Mark admitted that he had discarded the underlying evaluation forms in 1991 and in 1992, immediately after he had completed scoring.

The absence of the completed forms which the evaluators had turned over to Mark in late 1991 and late 1992 casts doubt on Mark's explanation of the selection of the five alleged discriminates. For, given his hostility toward their union activities, the discarding of those documents would permit him to rig the scores of the union activists and thus get rid of them in the planned layoffs, without implicating evidence to worry about.

Further cause for doubt of Mark's explanation is that he discarded the 1992 evaluations after McQuaide had received the unfair labor practice charges arising out of his earlier layoffs. Bodenschatz and Patula filed charges against McQuaide in April 1992, in Cases 6-CA-24491 and 6-CA-24500. McQuaide received a copy of Patula's charge on April 21, 1992, and a copy of Bodenschatz' charge on or about April 25, 1992. I find, contrary to Mark's denial, that he was aware of those charges when he discarded the 1992 evaluations.⁷⁰

Mark cast further doubt on his credibility, when he sought to explain why he discarded the completed evaluation forms in 1991 and 1992. On cross-examination, Mark McQuaide asserted first that he had no place to store the underlying documents, which for each year would have created a stack of paper "six or seven inches high." On further cross-examination, Mark conceded that each year's underlying documents would amount to about 200 sheets of paper one-half inch high. Thus, Mark's explanation for discarding the 1991 and the 1992 evaluation forms does not withstand scrutiny. Instead, I find the explanation in Foreman Kostyk's remark to employee Pritt that Wingard's layoff "had to be on account of the union."

⁷⁰ On cross-examination, when asked if unfair labor practice charges had already been filed when he threw away the underlying documents for the 1992 evaluations, Mark was evasive. First, he answered, "Nobody said anything to me." When asked again, he testified, somewhat annoyed, "I never read any charges." When I asked him if he knew anything about them, Mark, in an irked tone, answered, "No, I didn't." Mark's flip attitude toward my questions and his evasive answers convinced me that he knew about Bodenschatz' and Patula's unfair labor practice charges when he discarded the underlying documents for the 1992 evaluations of the Johnstown dock employees.

On direct examination, Mark denied changing any of the numbers after scoring the evaluations in 1991 and 1992. However, Mark's false explanation of the absence of the underlying documents compelled me to reject his denial.

In its brief and at the hearing, McQuaide sought to rely on its records to justify the five layoffs. However, McQuaide's own brief (Br. 103) admitted that "subjective judgment" not records was the basis for the evaluations. Thus, I find such belated reliance to be an afterthought, designed to camouflage the real motive for the five layoffs.

In sum, I find that Mark McQuaide laid off Scott Bodenschatz, Joe Patula, Raymond Webb, David Rich, and Timothy Wingard in reprisal for their union activity and prounion sentiment. By these five layoffs, I further find that McQuaide violated Section 8(a)(3) and (1) of the Act.

8. Glen Watts

a. *The facts*

McQuaide hired Glen Watts at its Bethel, Pennsylvania terminal on June 1, 1989. For the first year, Watts worked at Bethel in the grease pit, servicing trucks. His duties included changing oil and greasing. The following year, McQuaide reassigned him as a mechanic on the third shift, 11 p.m. to 7:30 a.m., with hourly pay of \$8.75. He worked under the immediate supervision of Burnell Moyer. Watts was one of eight mechanics at McQuaide's Bethel facility. In 1990, he trained employee Robert Renninger to replace him as a greaser.

In about November 1991,⁷¹ Watts heard about a union organizing drive among McQuaide's Ohio drivers. A few weeks later, in November 1991, Watts attended a meeting which Lee, Stan, and Bill McQuaide conducted at Bethel. The McQuaides told the Bethel employees about the Ohio union activity. Lee expressed his feelings toward the Union and told of companies which had gone union and then went out of business.

In December 1991, Watts met with Local 429 Organizer and Business Agent Matt Matetich, who explained plans for organizing McQuaide's employees. Watts received authorization cards from Matetich. On December 15, 1991, Watts signed an authorization card for Local 429. During the same month, Watts distributed six or seven cards for Local 429 to his fellow mechanics at work. Employees Robert Renninger, Rodney Spancake, and Leon Martin saw Watts distributing cards at work.

Foreman Burnell Moyer saw Watts pass out union cards to employees at Bethel. At all times material to Watts' employment, Moyer had authority to discipline employees, to give them time off for sickness or an appointment, and to require them to do work over, if he deems it necessary. Moyer also assigned work to the mechanics on his shift. I find that at all times material to Watts' employment, Moyer was a supervisor within the meaning of Section 2(11) of the Act.

On December 20, 1991, Watts handed out the last of his union cards at work, and then left on a road call. Watts was gone about 3 hours. When Watts returned to the Bethel facility, Garage Foreman Robert McQuait told him that

McQuaide had dismissed employee Herb Felty and that Watts would be demoted to replace him as a greaser on the 5 p.m. to 1:30 a.m. shift, with a reduction in hourly pay from \$8.75 to \$6.50. At the time of Watts' demotion, there were two Bethel mechanics who were junior to him, Robert Renninger and Steve Stuble.

On February 20, Watts reported for work at Bethel. Soon after he had arrived, Garage Foreman McQuait approached him and asked if he had lost pieces to the pneumatic grease gun. Watts said he had not taken it apart and did not know what pieces McQuait was talking about. McQuait then accused Watts of trashing the restroom with grease in the deep sink and paper all over the bathroom. The foreman said Watts should have used industrial solvent to remove the grease from his hands before going into the bathroom. Watts answered that the solvent would cause the skin on his hands to crack, chap, and then bleed. McQuait went on to complain that Watts had slandered the Company by writing "AFU" on a work order on the previous day. McQuait told Watts not to punch in, that he was fired, and not to "be hanging around here."

b. *Analysis and conclusions*

The General Counsel argues that McQuaide demoted Watts and reduced his salary on December 20, 1991, in response to his union activity. McQuaide's position is that union activity had nothing to do with its decision to send Watts back to the grease pit and cut his hourly wage by \$2.25. I find ample support for the General Counsel's contention.

Watts' demotion and wage reduction occurred without warning on December 20, 1991, little more than 3 hours after he had openly distributed an authorization card for Local 429 at the Bethel garage. Indeed, Watts had been engaged in such conduct openly since December 15, 1991. Foreman Moyer had seen Watts handing out cards. The timing of Foreman McQuait's announcement of these changes raises the thought that Watts' distribution of his last union card had something to do with his misfortune.

McQuait testified that as of the time of Watt's demotion he did not know of any union activity by Watts. However, McQuait did not deny suspecting Watts of supporting Local 429. Nor did McQuait deny hearing about Watts' union activity from either Terminal Manager Gary, Foreman Moyer, or any other source. I have found, above, that in October 1991 McQuait's boss, Terminal Manager Jim Gary, knew of employees passing out union cards. As a member of McQuaide's management, Gary was likely to share his knowledge and suspicions of union activity and union activists with McQuait and Director of Maintenance Plummer. I also find it likely that Foreman Moyer quickly told McQuait about seeing Watts' union activity.

The timing of McQuait's announcement of Watts' demotion and wage loss also suggests that McQuait, Plummer, and other members of McQuaide's management regarded Watts as an active supporter of Local 429. Thus, I find that in December 1991, prior to the decision to demote Watts, McQuait, Gary, and Plummer at least suspected him of being a union activist.⁷²

⁷¹ Unless otherwise stated, all dates concerning Watts occurred in 1992.

⁷² Robert Renninger was a vocal union supporter. At some undisclosed time, McQuait asked him about Local 429's campaign. How-

There are other factors which suggest that Watts' distribution of union cards provoked McQuaide's management. As found, above, in October and November 1991, Bethel Terminal Manager Jim Gary told a Bethel driver that he had heard that employees were distributing union cards and, in violation of Section 8(a)(1) of the Act, warned that McQuaide would shut down rather than allow the Union to succeed in organizing its employees. As found above, in November, Gary again violated Section 8(a)(1) of the Act, when he warned Bethel employee Martin that McQuaide would shut down rather than deal with a union. Also, in November 1991, Lee, Stan, and William McQuaide conducted a meeting at which Lee spoke against having a union represent McQuaide's employees. In sum, the record makes clear that the Bethel manager and his superiors in Johnstown were anxious to keep Local 429 from organizing McQuaide's employees. Further, there is ample showing that McQuaide's management was willing to use unlawful economic reprisals to punish union activists and supporters. Thus, the General Counsel has made a strong showing that on December 20 McQuaide demoted Watts and reduced his hourly wage to punish him for handing out cards to his fellow employees for Local 429.

In support of its contention that union activity played no part in the decision to reduce Watts, McQuaide offered the testimony of Foreman McQuait and Director of Maintenance John Plummer. Their conflicting versions of how the decision to select Watts for demotion, however, came about undermines McQuaide's position. According to McQuait, in late 1991, after greaseman Felty's dismissal, Plummer consulted McQuait about a replacement. In his pretrial statement, McQuait asserted that the decision to demote Watts was just up to Plummer. Before me, McQuait testified that he and Plummer made that decision. Plummer testified, in substance, that he made the decision to replace Felty with Watts. In light of the inconsistency between McQuait's affidavit and his testimony before me, I find that Plummer made the decision.

McQuait also testified that he told Plummer that employee Reninger did a better job on the floor than Glenn Watts did, and thus he would use Watts in the grease pit. Plummer's testimony did not mention any comparison of McQuait with Reninger. Instead, Plummer testified that he decided to transfer Watts to the "important job" of greaser and oil changer because they "needed somebody who was capable of handling the job as well as getting the jobs done." This conflict between McQuait's and Plummer's testimony suggests that Watts' workmanship was not the topic which they discussed when Plummer was deciding his fate. Instead, it suggests that each hastened to come up with an explanation which would shield McQuaide from a finding that Watts' demotion was unlawful.

Another flaw in the defense is that McQuaide did not explain why it reduced Watts' hourly wage by \$2.25, when Plummer testified, in substance, that Watts was a capable employee, who could get the work done in an "important job." Instead of rewarding Watts' ability, McQuaide reduced

his wages. Such a wage policy is not likely to encourage excellence. In any event, Watts' loss of wages provides further support for my finding that Plummer's stated reason for moving him to the grease pit was pretextual. I further find, therefore, that by transferring Watts to the grease pit and reducing his wages on December 20, 1991, McQuaide violated Section 8(a)(3) and (1) of the Act.

McQuaide claims it discharged Watts on February 20 for misconduct; including throwing a grease gun, throwing a jack handle, trashing a bathroom at the Bethel facility, and writing "slack adjuster f—ked up" on an internal work order. Analysis of the testimony and exhibits relevant to these asserted grounds for Watts' discharge shows that they were pretexts.

According to Maintenance Director Plummer, he, not McQuait, decided to discharge Watts. Plummer also testified that he based his decision on McQuait's report of Watts' misconduct. McQuait's testimony shows that he told Plummer that he intended to fire Watts for misconduct after reporting the "situation," and that Plummer said he was doing the right thing. I find that McQuait believed that he had made the decision subject to his superior's approval. For his part, Plummer's testimony shows that he believed that it was his decision. I find it unnecessary to resolve the question of who made the final decision.

According to McQuait, on the morning of February 20, Foreman Burnell Moyer reported to McQuait that Watts had thrown a grease gun out of the grease pit against the garage door and a jack handle out of the pit area. Also, according to McQuait, Moyer told him that Watts "had the men's room sink all greased up with fresh grease." Moyer's testimony was that he could not recall telling McQuait of these incidents. Also, on February 20, Moyer provided McQuait with a written statement which did not say anything about throwing a grease gun any further than the grease pit. Nor did the statement accuse Watts of putting fresh grease in the men's room. A written statement from employee Renninger, who was working on the same shift with Watts, accused Watts only of throwing a jack handle in front of a service vehicle.

McQuaide offered the written statements of Moyer and Renninger to corroborate McQuait's testimony regarding what he knew of Watts' misconduct on the night shift on February 20. The contents of Moyer's statement did, however, not corroborate important parts of McQuait's testimony. The assertions that the grease gun hit the garage door and that Watts was responsible for putting fresh grease in the bathroom sink do not appear either in Moyer's testimony or in the statement he gave to McQuait on February 20. That McQuait accepted Moyer's statement without suggesting revision suggests that it was accurate. That McQuait felt the need to embellish it by having the grease gun hit a garage door, and by claiming that Watts used fresh grease to trash the bathroom shows an intent to bolster the excuse for firing Watts.

Moyer's statement did not identify who had put grease into the bathroom sink. Renninger and other employees had access to that sink. Yet McQuait did not look further than Watts. Without any investigation, he attributed the misdeed to Watts and made it more serious by claiming that Watts had put fresh grease in the sink. McQuaide's resort to harsh economic reprisals against Watts only 2 months earlier be-

ever, Renninger did not hand out any union cards during Local 429's campaign. After Watts' discharge Renninger handed out union bumper stickers and hats. There was no showing that any of the other Bethel mechanics handed out union cards.

cause of his union activity suggests that McQuaide was interested in getting Watts to quit. The events of February 20 provided an opportunity for McQuaide to diminish Local 429's support by discharging Watts.

McQuait's initial testimony suggests that he did not consider Watts' use of obscene language in the work order of February 19 as a ground for discharge. McQuait's account of his remarks to Watts on February 20 shows no mention of a work order or its contents. McQuait restricted his explanation to Watts' conduct on the third shift on the previous night. Later, on direct examination, when counsel asked if the work order played any role in his decision to terminate Watts, McQuait answered, "I was very unhappy with this type of writing from the work orders." Counsel then asked, "So, my question is was this part of the consideration when you decided to terminate him?" McQuait answered yes. I find from McQuait's evasive response and his initial testimony that he did not rely on the obscene language when he decided to discharge Watts on February 20.

McQuait also conceded that irritated truckdrivers write work orders up "in the same manner." Yet, McQuaide did not show that it discharged or otherwise disciplined any truckdriver, or any other employee for using obscene language in a work order. I find from Robert Renninger's testimony that in 1991 and 1992 when he was a mechanic at Bethel he used "no f—king good" on work orders to describe parts. McQuaide did not discipline Renninger for using that obscene language. Again, the record shows that Watts' use of obscene language was a pretext which McQuaide seized on after February 20 to counter the General Counsel's strong showing of unlawful motive.

I find, contrary to McQuait's denial, that McQuaide discharged Watts on February 20 because it wanted to rid itself of a union activist, who was assisting Local 429's organizing campaign. I find that by this discharge, McQuaide violated Section 8(a)(3) and (1) of the Act.

9. Leon Martin

a. *The facts*

McQuaide employed Leon Martin from May 10, 1982, until it laid him off on January 9, 1992.⁷³ During his 10 years at McQuaide's Bethel Terminal, Martin was, in succession, a part-time dock worker, a full-time dock worker, straight truckdriver, tractor trailer driver, and finally yard jockey. For about a year prior to his layoff, he and the other Bethel yard jockey, Gary Emerich, worked either the 4 p.m. to midnight shift or the midnight to 8 a.m. shift on a rotating basis. Jim Gary supervised their work. The yard jockeys move trailers and straight trucks to the dock, remove trailers from the dock, and fuel trucks and tractors.

A flier in the Bethel Terminal, in October, was Martin's first inkling of union activity. The flier announced that Lee McQuaide would come to Bethel and talk to the employees. In mid-October, Martin attended a meeting at which Lee spoke about the union activity at McQuaide's Ohio operations.

As found above, on November 1, Terminal Manager Gary asked Martin about a union meeting involving some of

McQuaide's Ohio drivers. When Martin invited him to attend, Gary said he could not attend because of a wedding. Gary went on to say that if he could attend the meeting, he would tell the Ohio drivers about him losing his job and putting McQuaide out of business because of the organizing drive.

In early November, Martin met with Ohio drivers Jack and Tom Boyes at the Midway Diner. At this meeting, Martin signed a union card for Local 429, which he gave to Tom Boyes. Martin also received union cards which he distributed to McQuaide drivers at Bethel. He gave stacks of union cards to employees Glenn Watts and Dave Mardonis. Martin received sign authorization cards, which he sent to Tom Boyes in envelopes carried by shuttle drivers. Randy Hunter was Martin's Johnstown contact for union activity.

Martin assumed a leading role in Local 429's organizing effort. He organized a meeting between 2 of its officials and 25 or 30 of McQuaide's Bethel employees, at the Midway Diner, on December 15. At this meeting, he signed a second card for Local 429. Martin obtained a quantity of Local 429's cards. He gave some to Glenn Watts. Martin kept the remainder, which he distributed to employees at McQuaide's Bethel Terminal. He distributed up to 40 cards among the Bethel employees.

In mid-December, Bethel Terminal Manager Gary asked Martin for an authorization card. Martin said he would make sure that Gary received one. Gary said no, he could not sign a card because he was management.⁷⁴

On January 9, 1992, Terminal Manager Gary issued a lay-off slip to Martin. According to the slip, "lack of work" was the reason for Martin's sudden, unheralded layoff. Indeed, prior to issuing this slip Gary had not reduced Martin's hours. Nor had Martin experienced any reduction in the work he was doing. This was the first layoff of which he was aware in the 10 years he worked for McQuaide.

Gary admitted that he played no part in the decision to lay off Martin. Lee McQuaide telephoned Gary and ordered him to lay off Martin. Lee told Gary that Martin had less time than Gary Emerich.⁷⁵ According to Gary and McQuaide's posthearing brief, McQuaide has a policy "of not according any weight" to seniority. When he handed the layoff slip to Martin, Gary said he didn't understand why Martin was being laid off, but that was what Lee McQuaide wanted, and it made no sense.⁷⁶

⁷⁴ I credited Martin's uncontradicted account of his conversation with Gary in mid-December about an authorization card.

⁷⁵ Lee McQuaide testified that he contacted Bethel to find out who would be "easiest to replace." However, Terminal Manager Gary's testimony was that Lee called up to tell him to lay off Martin because he had less seniority. Lee's offhand manner as he explained how he had to get rid of "deadwood" (Martin) suggested that he was improvising as he went along. As Gary's testimony was more concise and he seemed more respectful toward the proceeding, I have credited his testimony regarding his conversation with Lee McQuaide.

⁷⁶ I based my findings regarding Gary's remarks when he issued the layoff slip on Martin's testimony. In response to a leading question, Gary denied telling Martin that Lee's decision to lay Martin off did not make sense to Gary. However, Gary did not deny the balance of Martin's recollection of the layoff confrontation. As Martin seemed to be the more forthright witness regarding this incident, and as his version seems logical, given that Terminal Manager Gary had

⁷³ Unless otherwise stated, the dates relevant to Leon Martin occurred in 1991.

After his layoff, Martin returned to McQuaide's Bethel facility once to retrieve some of his belongings. Thereafter, by letter of February 20, 1992, Lee prohibited Martin from entering onto McQuaide property, and warned that Martin would be charged with trespassing if he ignored Lee's notice.

b. *Analysis and conclusions*

The General Counsel urges a finding that McQuaide selected Martin for layoff for engaging in union activity. McQuaide counters with a contention that union activity had nothing to do with Martin's layoff. I find merit in the General Counsel's position.

The General Counsel has shown that Martin was an active supporter of Local 429 and that Bethel's management was aware of his union activity. In November, and again in December, Bethel Manager Gary singled Martin out to ask him first about a union meeting, and later about a union card. In both instances, Martin identified himself as a union activist. Martin invited Gary to the meeting and, in the second encounter, offered to obtain a union card for Gary. I find from employee James Weatherholtz' testimony that in December he told Gary that Martin had given him a union card.

Gary also showed strong hostility toward Martin's union activity when he violated Section 8(a)(1) of the Act by warning Martin that McQuaide would shut down rather than put up with a union. I have no doubt that Gary informed his superiors in Johnstown, who were manifestly interested, that Martin was helping Local 429. As I have found repeatedly, Lee and Stan McQuaide knew how to deal with union activists among their employees.

Lee McQuaide's phone call directing Gary to lay off Martin came only about 2 weeks after the employee had offered to obtain a union card for Gary. Gary was not the source of the thought that Martin should be laid off. That idea came from Lee, in Johnstown, without any consultation with the manager of Bethel. Indeed, Gary told Martin that he did not understand why Martin was being laid off. Gary's remarks and the fact that the impetus for the layoff came from Lee support the General Counsel's view that Lee McQuaide selected Martin to get rid of one of Local 429's advocates.

In the same phone call, Lee told Gary that Martin was selected because he had less seniority than Gary Emerich, the other yard jockey. Lee's reliance on seniority suggests that he was hard pressed to come up with an excuse for getting rid of a union activist. For, as McQuaide's brief showed, this was a departure from its policy of ignoring seniority. This abandonment of policy was but one more ingredient in the General Counsel's *prima facie* showing that Martin's union activity was a factor in McQuaide's decision to select him for layoff on January 9, 1992.

McQuaide's defense is in disarray. According to Lee McQuaide, he contacted the Bethel Terminal and asked Manager Gary who would be "easiest to replace." Lee testified that Gary advised that one of the jockeys could be laid off without need of a replacement and after reflecting on the matter he decided that as Gary Emerich was hauling fuel in addition to jockeying, Martin was expendable as "deadwood." Lee's testimony omits any reference to seniority as a factor. Yet McQuaide's brief insists: "The decision was

based in part on the fact that Mr. Martin was the least senior jockey." This assertion also flies in the face of the admission 89 pages later, in the same brief, that McQuaide ignores seniority. This disagreement between the brief and Lee and the brief's own internal discord suggest an effort to contrive a suitable explanation in the face of a strong *prima facie* case.

As found above, the conversation between Lee and Manager Gary did not consist of an inquiry about who would be "easiest to replace." Instead, it was an order from Lee to get rid of Martin on the excuse that he was less senior to Emerich. In light of Lee's false account of his selection process and Gary's credited account of their conversation, I do not credit Lee's further testimony that Emerich's driving motivated him to get rid of Martin. In his conversation with Gary, Lee never mentioned Emerich's driving. Emerich's driving was an afterthought which played no part in Lee's decision to select Martin for layoff.

I find that McQuaide selected Leon Martin for layoff on January 9, 1992, in reprisal for Martin's assistance to Local 429. Accordingly, I further find that by laying off Martin, McQuaide violated Section 8(a)(3) and (1) of the Act.

10. James Weatherholtz

a. *The facts*

In November 1989, McQuaide hired James Weatherholtz as a straight truckdriver at Bethel. His routes included Delaware, Maryland, New York, New Jersey, and Pennsylvania. Terminal Manager Jim Gary was his immediate supervisor.

Weatherholtz first learned of the union campaign in late October 1991 from Leon Martin. On November 3, 1991, Weatherholtz received a union card from Leon Martin and signed it in the Bethel Terminal's lunchroom. On December 18, 1991, Weatherholtz received and signed a card for Local 429. He signed it at the fuel island at the Bethel Terminal and returned it immediately to Leon Martin, who had given it to Weatherholtz.

In December 1991, before Christmas, Weatherholtz told Terminal Manager Gary that he had received a card from Leon Martin, and had signed it. Weatherholtz expressed pronoun sentiment to Gary, suggesting that a union could only make the Company better. Gary did not respond to Weatherholtz.

On April 16, 1991, while driving for McQuaide, Weatherholtz received a speeding ticket on interstate 78, Berks County, Pennsylvania. He pleaded not guilty and retained Attorney Michael Fiorillo to represent him in the resulting litigation. Fiorillo's records show that on January 13, 1992, he and Weatherholtz had a phone conversation regarding the preparation of an appeal in this matter. The district justice found Weatherholtz guilty. The Court of Common Pleas for Berks County found him not guilty.

At approximately 8:50 a.m., on January 13, 1992, Weatherholtz called the Johnstown Terminal from his home, using McQuaide's 800 telephone number. In the course of his employment, Weatherholtz became acquainted with McQuaide's 800 number, which he and the other McQuaide drivers regularly used in connection with their pickup and delivery activities. On this occasion, Weatherholtz told McQuaide's switchboard operator, Judith Ann Kabler, of his need to talk to his attorney regarding his speeding ticket, and asked her to patch him through to Fiorillo, at 717-622-6880.

no part in the decision, I have credited Martin's testimony in this regard.

Kabler placed the call, and remained on the line while the phone rang. There was no answer and Kabler told Weatherholtz to try the number later.

Before Weatherholtz called again, Kabler learned that he was not working that day. When Weatherholtz called again and asked to be patched to 717-622-6880, Kabler refused to put his call through. Weatherholtz explained that he had to call his lawyer about a speeding ticket he received when he was driving a McQuaide truck. Kabler said she could not because the ticket was his own personal problem. Later that morning, Weatherholtz telephoned his attorney directly and conversed with him for a half hour.⁷⁷

In the meantime Kabler told Mark McQuaide about Weatherholtz' request for her assistance in placing a call. She pointed out that Weatherholtz was not working. Mark said, "I'll take care of it." Later in the day, Kabler checked with Lee to ascertain if her response to Weatherholtz' second request had been correct. Lee said she had done the right thing.⁷⁸

On the afternoon of January 13, 1992, Jim Gary telephoned Weatherholtz the news that he was terminated and that "it had to do with something about the telephone." Gary also told Weatherholtz to get in touch with Lee McQuaide.

In a telephone conversation with Lee on the next day, Weatherholtz asked why he had been fired. Lee answered that he could not have the drivers using the 800 number like that. Weatherholtz explained that he had been trying to get through to his lawyer regarding a license suspension. Lee did not want to hear the explanation and cut Weatherholtz off. Lee said he considered Weatherholtz' use of the 800 number to be stealing and that he was terminated.

McQuaide has not maintained a written policy regarding the use of its 800 telephone number.⁷⁹ Further, with the exception of Weatherholtz, from 1990 until July 12, 1993, McQuaide did not take any disciplinary action against any employee for allegedly misusing its 800 number.

Following his termination, Weatherholtz obtained a class A commercial driver's license, which permitted him to drive a tractor-trailer. In January 1993, Weatherholtz telephoned Lee McQuaide seeking employment as a driver. Weatherholtz identified himself as "the guy a year ago that was fired for asking to use the telephone." Lee asked why Weatherholtz was calling. Weatherholtz said he wanted to talk about a job. Lee replied that Weatherholtz' name now rang a bell" and he knew who Weatherholtz was. Lee recalled that Weatherholtz had some kind of litigation against McQuaide with the National Labor Relations Board. Finally, Lee said he could not employ Weatherholtz as long as there was that pending litigation.⁸⁰

⁷⁷ I have based my findings regarding Weatherholtz' efforts to call his attorney on January 13, 1992, on his and Kabler's testimony, except for her testimony that he called New Jersey. As Attorney Fiorello's records corroborate Weatherholtz' testimony that he called a Pennsylvania number, I have credited his testimony in this regard.

⁷⁸ As Kabler seemed to be a forthright witness, I have credited her testimony regarding her encounters with Mark and Lee McQuaide on January 13, 1992.

⁷⁹ My findings regarding Weatherholtz' conversations on January 13, and 14, 1992, are based on his uncontradicted testimony.

⁸⁰ My findings regarding his conversation with Lee McQuaide in January 1993 are based on Weatherholtz' testimony. Lee denied say-

b. Analysis and conclusions

The General Counsel seeks a finding that Weatherholtz' discharge violated Section 8(a)(3) and (1) of the Act, and a further finding that Lee McQuaide's refusal to rehire Weatherholtz ran afoul of Section 8(a)(4) and (1) of the Act. Lee said he considered Weatherholtz' attempt to use McQuaide's 800 number to be stealing and for that reason alone he fired Weatherholtz. I have not credited Lee's denial that he had refused to rehire Weatherholtz in January 1993 unless Weatherholtz withdrew unfair labor practice charges against McQuaide.

The record shows that Weatherholtz openly supported Local 429's organizing effort among McQuaide's Bethel employees. In December 1991, before Christmas, he told Terminal Manager Gary that he had signed a card for Local 429 and that he thought a union would be good for McQuaide. In fact, Weatherholtz signed such a card on December 18, 1991.

Within a few weeks of Weatherholtz' admission of prounion sentiment, Lee McQuaide discharged him for stealing. Lee's repeated resort to termination and other economic reprisals against other union supporters plus this timing raises the specter of another instance of such discriminatory treatment.

When asked at the hearing in these cases, if he had any idea whether Weatherholtz was a union activist or a union supporter, Lee quickly answered, "No, I wouldn't." However, the record shows that Lee was constantly alert to evidence that an employee was supporting Local 24 or Local 429. Further, his subordinate supervisors were aware of his hostility toward the Teamsters, as reflected in their unlawful threats. In November 1991, Terminal Manager Gary made such an unlawful threat to employee Martin. These factors together with my impression that at this point in his testimony, Lee had little respect for the forum, persuaded me to reject his denial.

I also find no merit in Lee's explanation of Weatherholtz' discharge. His claim that Weatherholtz' attempt to use McQuaide's 800 number was stealing is unfounded. According to *The American Heritage Dictionary, New College Edition*, the definition of steal, as Lee McQuaide used it against Weatherholtz, is: "To take without right or permission, generally in a surreptitious way." There is no showing that Weatherholtz did anything like that. Instead, the record shows that he asked McQuaide's switchboard operator to permit him to use its 800 number. He did not make any claim to be on duty and he was honest about the reason for his call. Kabler could have said no initially, and that would have been the end of the matter. Instead, she attempted to put Weatherholtz in touch with his lawyer. When Weatherholtz called back, he did so at Kabler's invitation. When she refused to put his call through because he was not on duty, he explained the purpose of his call truthfully. Kabler did not honor Weatherholtz' request. Kabler explained all this to Lee. Yet Lee seized on Weatherholtz' ingenuous request and labeled it "stealing." This was the first time since 1990, when McQuaide began providing an 800

ing that he could not hire Weatherholtz as long as he had the unfair labor practice charge against McQuaide pending. As Weatherholtz impressed me as being the more forthright witness of the two, I have credited his testimony in this regard.

number for its drivers, that the McQuaide fired an employee for trying to use it. Weatherholtz' request was not misconduct entitling him to be fired. Lee was anxious to get rid of him. The General Counsel has provided the reason for this anxiety.

I find that McQuaide has not rebutted the General Counsel's strong showing that Lee fired Weatherholtz in reprisal for his support for Local 429. Accordingly, I find that by terminating Weatherholtz on January 13, 1992, McQuaide violated Section 8(a)(3) and (1) of the Act.

I also find that McQuaide refused to rehire Weatherholtz because Lee believed that he was behind the unfair labor practice charges in Case 6-CA-24636, filed on November 23, 1992, by Local 429. By this refusal, I further find that McQuaide violated Section 8(a)(4) and (1) of the Act. *Memphis Truck & Trailer*, 284 NLRB 900, 911 (1987).

McQuaide argues that Weatherholtz is not entitled to reinstatement for misconduct. Thus, according to McQuaide, while in its employee, Weatherholtz drove while his license was suspended and thus violated Federal law and its own policy. The record does not show that McQuaide actually discharged other drivers who engaged in such misconduct. However, as this matter was not fully litigated before me, I find that this matter should be deferred to the compliance stage of these proceedings.

CONCLUSIONS OF LAW

1. By threatening shutdown of its operations if a union succeeds in organizing its employees; creating the impression among its employees that their union activities were under surveillance; telling employees that other employees lost hours of employment because of their union activity; threatening an employee with bodily harm because he supported a union; threatening unspecified reprisals because an employee supported a union; coercively interrogating employees regarding their union membership, activity, or sentiment toward a union; prohibiting an employee from participating in union activity; threatening employees with discharge because they supported the Union; and promising a wage increase if employees' unfair labor practice charges filed with the Board, Respondent McQuaide has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. The Respondent violated Section 8(a)(3) and (1) of the Act by:

- (a) Issuing warnings to John Pine, Jack Boyes, and Randy Hunter.
- (b) Suspending Jack Boyes and Thomas Boyes on January 16, 1992.
- (c) Suspending Randy Hunter on December 8, 1992.
- (d) Demoting Glenn Watts.
- (e) Reducing the working hours of Thomas Boyes.
- (f) Refusing to allow Jack Boyes to drive and denying him wages for 5-1/2 hours on March 28, 1992.
- (g) Withholding wages for 5-1/2 hours from Thomas Boyes on April 3, 1992.
- (h) Laying off Thomas Boyes, Dale Salisbury, David Rich, Timothy Wingard, Raymond Webb, Scott Bodenschatz, Joseph Petula, Ivan Wilson, and Leon Martin.
- (i) Denying wages to Thomas Boyes.

(j) Discharging Barry Michalides, Glenn Watts, Robert Marshall, James Weatherholtz, Jack Boyes, Thomas Boyes, Dale Salisbury, and David McGuigan.

3. The Respondent violated Section 8(a)(4) and (1) of the Act by:

- (a) Refusing to rehire James Weatherholtz.
- (b) Suspending Randy Hunter.
- (c) Discharging Robert Marshall.

4. The Respondent did not violate Section 8(a)(3) and (1) of the Act by:

- (a) Withholding work from Thomas Boyes on February 27, 1992.
- (b) Suspending Jack Boyes for 2 days and Thomas Boyes for 1 day on or about March 19, 1992.
- (c) Attempting to transfer Thomas Boyes and Dale Salisbury to Johnstown, Pennsylvania, on or about February 4, 1993.
- (d) Laying off Thomas Boyes, Dale Salisbury, and David McGuigan in early February 1993.
- (e) Reducing Randy Hunter's routes and hours beginning on January 26, 1992.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having discriminatorily discharged and laid off employees, the Respondent must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of the discharge or layoff to the date of proper offer of reinstatement, less any net interim earnings as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having unlawfully suspended Randy Hunter, Thomas Boyes, and Jack Boyes; having unlawfully demoted Glen Watts and reduced his hourly wage; and having unlawfully deprived Thomas and Jack Boyes, respectively, of 5-1/2 hours' pay, Respondent must restore Watts to his former position as mechanic, and make all four whole for their losses of pay, plus interest as computed in *New Horizons for the Retarded*, above.

I shall also recommend that Respondent be required to rescind the unlawful warnings issued to John Pine, Jack Boyes, and Randy Hunter; the suspensions imposed on Jack Boyes, Thomas Boyes, and Randy Hunter; and the demotion imposed on Glenn Watts; and remove from its files any references to these warnings, suspensions, and Glenn Watts' demotion, the unlawful discharges of Barry Michalides, Glenn Watts, Robert Marshall, James Weatherholtz, Jack Boyes, Thomas Boyes, Dale Salisbury, Robert Marshall, and David McGuigan, and the unlawful layoffs of Thomas Boyes, Dale Salisbury, David Rich, Timothy Wingard, Raymond Webb, Scott Bodenschatz, Joseph Petula, Ivan Wilson, and Leon Martin and notify these employees that it has done so and that it will not use these adverse actions against them in any way.

Because the Respondent has a proclivity for violating the Act and has, by its egregious unfair labor practices, demonstrated a general disregard for the employees' fundamental rights, I find it necessary to issue a broad order requiring Re-

spondent to cease and desist from infringing in any other manner on the rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸¹

ORDER

The Respondent, W. C. McQuaide, Inc., Johnstown, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, laying off, disciplining, demoting, suspending, withholding wages from, or otherwise discriminating against any employee for supporting Locals 24 or 429, a/w International Brotherhood of Teamsters, AFL-CIO or any other union.

(b) Discharging, laying off, suspending, refusing to rehire, or otherwise discriminating against employees because they filed unfair labor practice charges with the National Labor Relations Board or appeared and gave testimony at a Board hearing.

(c) Threatening employees with a shutdown of Respondent's business, discharge, acts of physical violence, or other specified or unspecified reprisals because they assist or support Locals 24 or 429, a/w International Brotherhood of Teamsters, AFL-CIO or any other union.

(d) Telling employees that their wages have been reduced because they support Locals 24 or 429, or any other union.

(e) Coercively interrogating employees regarding their union activities or sentiment or regarding the union activities or sentiment of other employees.

(f) Creating the impression that its employees' union activities or other concerted activities protected by Section 7 of the Act is under surveillance.

(g) Prohibiting employees from engaging in activity in support of Locals 24 or 429 or any other union.

(h) Prohibiting employees from wearing hats, jackets, or other garments showing that the wearer supports Locals 24 or 429 or any other union.

(i) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Barry Michalides, Robert Marshall, James Weatherholtz, Jack Boyes, Thomas Boyes, Dale Salsbury, David McGuigan, David Rich, Timothy Wingard, Raymond Webb, Scott Bodenschatz, Joseph Petula, Ivan Wilson, and Leon Martin immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Offer Glenn Watts immediate and full reinstatement to his former job as a mechanic at Respondent's Bethel, Penn-

sylvania facility or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Make Thomas Boyes, Jack Boyes, and Randy Hunter whole for any loss of earnings and other benefits suffered as a result of their unlawful suspensions in the manner set forth in the remedy section of the decision.

(d) Remove from its files any reference to the unlawful layoffs, demotion, warnings, suspensions, or discharges and notify the employees in writing that this has been done and that the layoffs, demotion, warnings, suspensions, or discharges will not be used against them in any way.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Johnstown and Bethel, Pennsylvania facilities and at its Ohio facilities copies of the attached notice marked "Appendix."⁸² Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

⁸² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency for the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

⁸¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge, lay off, suspend, discipline, demote, withhold wages from, or otherwise discriminate against any employee for supporting Locals 24 or 429, a/w International Brotherhood of Teamsters, AFL-CIO or any other union.

WE WILL NOT discharge, lay off, suspend, refuse to rehire, or otherwise discriminate against our employees because they filed unfair labor practice charges with the National Labor Relations Board, or appeared and gave testimony at a National Labor Relations Board hearing.

WE WILL NOT threaten our employees with a shutdown of our business, discharge, acts of physical violence, or other specified or unspecified reprisals because they assist or support Locals 24 or 429, a/w International Brotherhood of Teamsters, AFL-CIO or any other union.

WE WILL NOT tell employees that their wages have been reduced because of their activity on behalf Locals 24 or 429, or any other union.

WE WILL NOT coercively interrogate our employees regarding their union activities or sentiment or regarding the union activities or sentiment of other employees.

WE WILL NOT create the impression that our employees' union activities or other concerted activities protected by Section 7 of the Act are under surveillance.

WE WILL NOT prohibit our employees from engaging in activity in support of Locals 24 or 429 or any other union.

WE WILL NOT prohibit our employees from wearing hats, jackets, or other garments showing that the wearer supports Locals 24 or 429 or any other union.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Barry Michalides, Robert Marshall, James Weatherholtz, Jack Boyes, Thomas Boyes, David McGuigan, Dale Salsbury, David Rich, Timothy Wingard, Raymond Webb, Scott Bodenschatz, Joseph Petula, Ivan Wilson, and Leon Martin immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL offer Glenn Watts immediate and full reinstatement to his former job as a mechanic at our Bethel, Pennsylvania facility or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, less any net interim earnings, plus interest.

WE WILL make whole Thomas Boyes, Jack Boyes, and Randy Hunter whole for any loss of earnings and other benefits suffered as a result of their discriminatory suspensions.

WE WILL remove from our files any reference to the unlawful layoffs, demotion, warnings, suspensions, and discharges and notify the employees in writing that this has been done and that the layoffs, demotion, warnings, suspensions, and discharges will not be used against them in any way.

W. C. MCQUAIDE, INC.